

The Western Constitutional Forum

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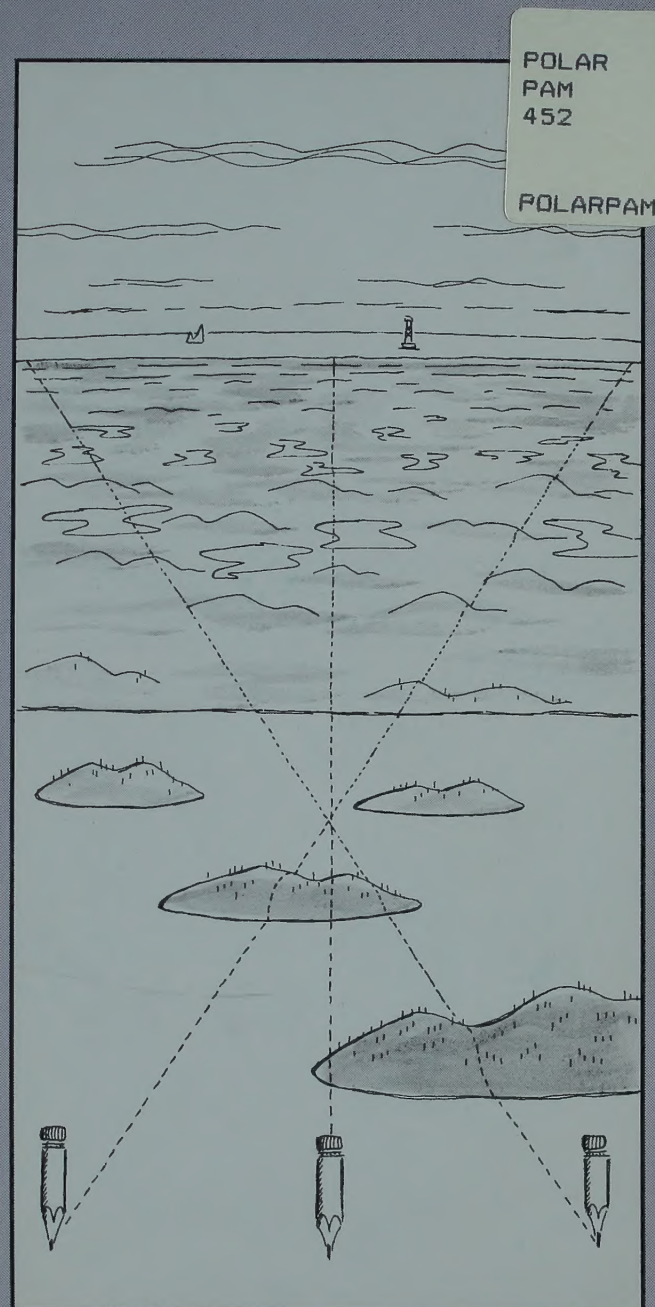
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12 CHOOSING A BOUNDARY



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CHOOSING A BOUNDARY

Selection of a Boundary

It's a long way from Yellowknife or Inuvik to Frobisher Bay! The present N.W.T. is vast. Probably everyone agrees on the need to bring government "closer to the people," both geographically and otherwise. That's the whole point in considering division of the N.W.T. — to create two smaller territories where the residents can become more self-determining. But exactly where should that border be?

This pamphlet looks at selecting the boundary between the two new territories. What needs to be considered in that decision? How will it be done? What is the Constitutional Alliance's position? Does the Federal Government agree?

The Constitutional Alliance and Division

The Constitutional Alliance consists of members of the Nunavut Constitutional Forum and the Western Constitutional Forum. Their major objective for boundary selection is to:

"... determine a boundary for dividing the Northwest Territories into two viable public government jurisdictions that have the political and economic potential to evolve towards provincial status..."

— Press Release, March 26, 1984.

In other words, the boundary must be drawn so that both new territories have roughly the same potential to eventually become full provinces.

The Constitutional Alliance: General Principles

In determining a new boundary, the Constitutional Alliance has agreed that **consideration must be given to:**

1. Ensuring a substantial number of aboriginal peoples in each new area.
2. The opinions of the people affected.
3. The economic potential of each new area, including concern for renewable and non-renewable resources, as well as amount of land.

4. Historic, linguistic and cultural communities of interest.
5. Traditional and continuing Land Use and Occupancy.
6. Existing and potential transportation and communication routes as well as overall geographic factors, such as lakes, rivers, mountains and oceans.



7. Existing electoral, administrative and other boundaries.
8. The present and possible organization of government services and their accessibility to territorial residents.
9. Various proposals for northern government such as 'Denendeh', 'Nunavut' and Western Arctic Regional Municipality (WARM), and the distribution of powers between local, regional and territorial levels of government.
10. Present and future economic development areas.
11. A boundary which will minimize transborder concerns and conflicts where possible.
12. Reciprocal provisions in both territories for joint resource management, use and renewable resource harvesting in areas of shared interests.
13. The process of deciding on the boundary:

The Constitutional Alliance has agreed on the following process:

First, the Alliance reaches consensus on a tentative proposal in accordance with the above principles. This will involve discussion among the members and informally with the public at large. No single factor or principle will be weighted above all others.

Second, the public, territory-wide, decide by some agreed-to formal process, possibly a territorial plebiscite.

But What Does the Federal Government Say?

The Federal Government has agreed in principle to division of the Northwest Territories, subject to the following conditions:

1. Northerners must reach consensus among themselves and with the federal government on a boundary.
2. Northerners must reach consensus among themselves and with the federal government on the distribution of powers to the local, regional and territorial levels of government.
3. All Comprehensive Land Claims must be settled (or at least significant progress made).
4. A majority of Northwest Territories residents must continue to support division.

Specifically with regards to selecting a boundary the federal government has said that:

- There must be a sound economic base for each territory.
- Communities of common interests resulting from history, geography, culture and systems of transportation and communication must be recognized.

- No single factor alone, including culture, can be used to decide the boundary. *The federal government rejects the creation of new territories based solely on ethnicity.*

Before You Draw the Line, Have You Considered . . .

1. The boundaries of the two new territories do not need to be the same as the various boundaries of northern Land Claims. In fact, the two processes are quite distinct. The Comprehensive Land Claims process will result in federally protected benefits and rights resulting from traditional Land Use and Occupancy. While Land Use and Occupancy is one of several important factors in selecting a new boundary, in the end division must result in two new territories each providing its residents with an efficient, accessible government.

2. Polar bear and caribou don't stop at border crossings! Hunters and trappers won't want different game laws on either side of the border. There will be a need to look at joint management of wildlife that shares both territories.

3. Water will flow across the border as well. One territory will probably be downriver from the other. How is it decided say, to build a new dam, or to use the water for some other purpose? Experience between Canada and the United States has shown that it is important to agree how joint border decisions will be made *before* a problem arises.

4. Instead of thinking of a boundary as a single line, it might be useful to consider a corridor or zone which divides the two territories. This corridor could be managed jointly by both governments. After all, there will be many common concerns along this boundary.

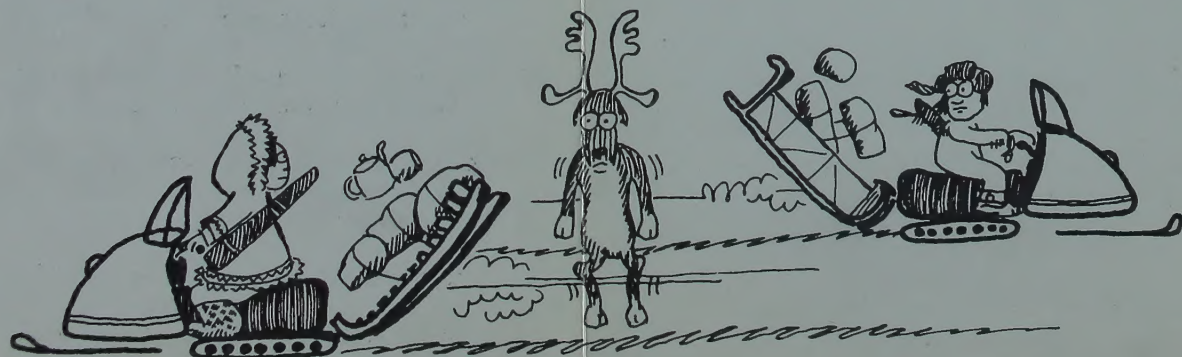
5. The northern boundaries of the new territories cannot be assumed! Usually provinces only control the land to the edge of the "low water mark" and the federal government controls the oceans. How would this work among the Arctic Islands? What about areas of permanent ice?

6. Although two new territories will each be smaller than the present N.W.T., depending on the location of the boundary, the Capital could actually be much further from some communities than it is now.

7. The location of a new boundary is already being affected by the Inuvialuit Final Agreement, the negotiation of Inuit and Dene/Metis claims, and the potential establishment of a WARM. The administrations and management zones set up from these processes will be important considerations when choosing a new boundary.

In Summary . . .

Division can be a positive process of working out a good, co-operative relationship between the two new territories. It need not be a "divorce" or "separation", but can instead be the mutual recognition of rights, and respect for legitimate differences. It can also clarify where the two new territories share common interests and how they can work together.



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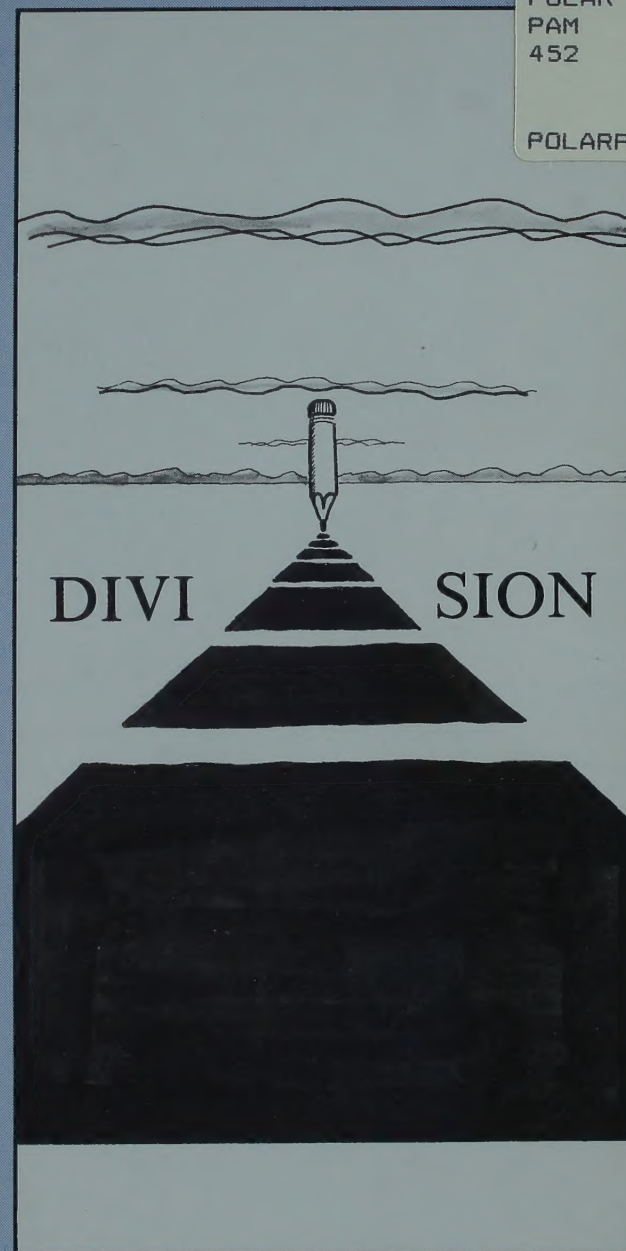
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WHAT'S ACHIEVED?

What Does Division Achieve?

It's exciting to draw new boundaries on a map! It feels important. The results are dramatic. Suddenly whole new regions, new territories are created.

At the same time, it's easy to forget why it's being done. What's the point of the border? Why split the present Northwest Territories? While the Western Constitutional Forum supports division as long as a satisfactory boundary can be negotiated, division must be considered in relation to the overall Principles and Objectives.

The Objectives

ONE: The development of a *Structure and Style of Government* which reflects the cultures and the values of each territory's unique population.

TWO: The active recognition and *Protection of Aboriginal Rights*.

THREE: The establishment of an appropriate *Balance between Individual and Collective Rights*.

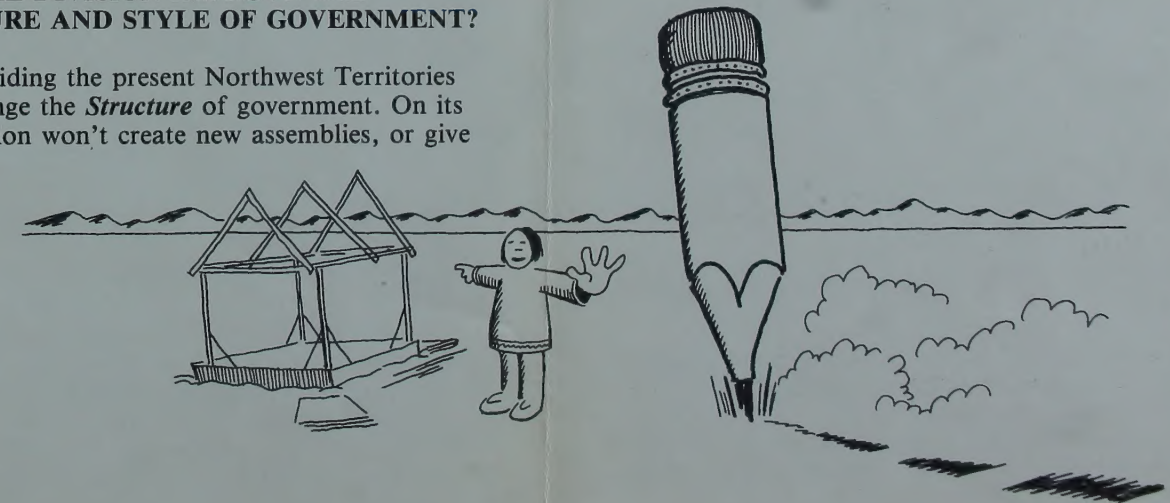
FOUR: The development of an *Efficient and Effective Government Service*.

FIVE: The steady *Transfer of Powers and Jurisdictions* from the Government of Canada to the new territories as each evolves towards provincial status. At the same time, the transfer of powers and responsibilities within the territories to Regional and Community governments.

How Division Affects the Objectives:

ONE: WILL DIVISION IMPROVE THE STRUCTURE AND STYLE OF GOVERNMENT?

Simply dividing the present Northwest Territories won't change the *Structure* of government. On its own, division won't create new assemblies, or give



regions more control. Nor will it change government *Style*. At least in the West, it won't necessarily mean more use of aboriginal languages or a different way of making decisions.

A Long-Term Inuit Majority

In the new Eastern territory, the Inuit will likely be a clear majority for some time to come. They will probably have a number of years to develop a style and structure of government which reflects their values and traditions, even if at the time of division they simply adopt a government pretty much like the present Government of the N.W.T.

At the same time, as a direct result of division, there will probably be an increase of several thousand non-natives in the East to run such a government and provide services. This new population will soon develop its own systems and political interests.

However, for some time after division the Inuit will be a majority and they will probably be able to make Inuktitut a language of government, to give clearer regional and community representation and possibly to include Inuit customs in the public legal system. Still, even for the East, just dividing the present N.W.T. does not on its own protect aboriginal rights or ensure the sharing of power among the various communities and regions.

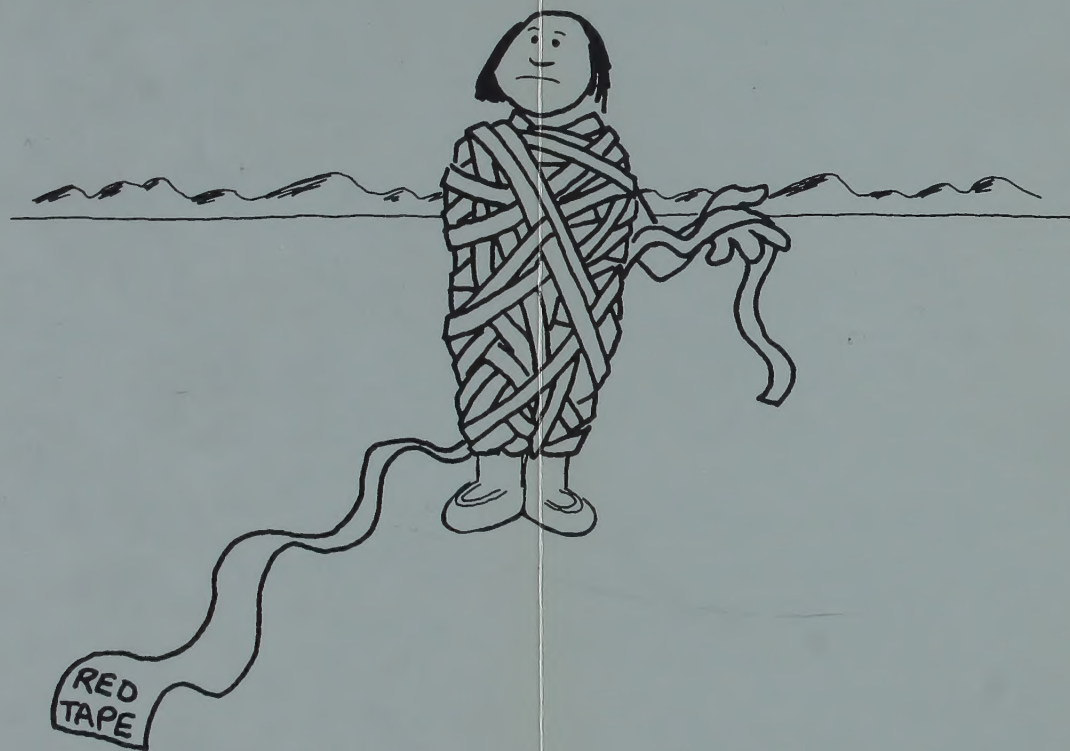
Less Time in the West

In the West it is more important to have a new structure and style of government at the time of division. Here, there are more non-natives, as well as important differences among the various Dene, Metis, Inuvialuit and Inuit cultures and languages. *Compared to the East, it would be much more difficult to protect aboriginal rights or change the structure of government later if it is not done at the time of division.*

TWO: ACTIVE RECOGNITION AND PROTECTION OF ABORIGINAL RIGHTS

Division on its own does nothing to achieve recognition of aboriginal rights or to create structures for guaranteeing continued protection. Indeed in the West, it would probably be more difficult after division to arrange for such new forms of government. As long as the N.W.T. is undivided, there will be an aboriginal majority for some time to come. However, aboriginal people will be a minority in the West after division. Therefore, division may actually threaten the rights of aboriginal people unless protection is guaranteed before division takes place.

Previous division of the Northwest Territories into the provinces of Manitoba, Saskatchewan and Alberta shows that aboriginal rights are not automatically recognized by such division!



THREE: THE ESTABLISHMENT OF AN APPROPRIATE BALANCE BETWEEN INDIVIDUAL AND COLLECTIVE RIGHTS.

Again, division on its own does not change the form or arrangements of government. Individual rights would automatically be protected as in the rest of Canada, but this would not necessarily be balanced by the recognition of the collective rights of aboriginal peoples.

In the West, the potential for a rapid increase in the non-native population could mean that it soon becomes difficult to recognize collective aboriginal rights within the public government. This could happen in Nunavut as well.

FOUR: THE DEVELOPMENT OF AN EFFICIENT AND EFFECTIVE GOVERNMENT SERVICE.

Lower transportation and communication costs will make each of the two new smaller territories more efficient and cost-effective to govern. There will be some duplication, however, and in total the combined costs of two separate governments will be greater than for the present single administration. Both territories will still depend on Ottawa for funding and there may be limits to funding increases. It is possible that at worst, division could result in a cutback of government services.

Cultural Jurisdictions and Efficient Government

Efficient government doesn't necessarily happen within a territory just because residents are of a similar cultural or ethnic background. Effective, accessible government depends on efficient transportation and communication within each new territory. It also depends simply on the distance from government offices.

In the 1982 plebiscite, residents east of Cambridge Bay expressed their alienation from the present Territorial Government by supporting division. Such alienation comes not only from cultural differences, but also from different East-West historical, transportation and communication patterns. It is not clear that the people of Tuktoyaktuk or Coppermine would be better served by a majority Inuit jurisdiction whose capital is in the east, rather than by a multicultural society whose capital is in Yellowknife.

FIVE: TRANSFER OF POWERS

How will the creation of two new territories affect the transfer of powers from Ottawa? On what basis is the federal government willing to turn over new powers? Population? Size of land? Resources? Ability to pay your own way?

There are no hard and fast rules. The province of Prince Edward Island is tiny with few people and few resources. It doesn't pay its own way. Still it has been granted provincial powers.

Before 1905, when Alberta and Saskatchewan were still part of the N.W.T., the federal government argued that their population of over 150,000 was too small to become a province. After 1905 the new Alberta depended on federal money for many years before it became the oil-rich province we know today.

The population of the Yukon Territory is about half that of the N.W.T. but that does not appear to keep it from moving towards eventual provincial status.

It is impossible to say whether one or two territories would get power and responsibility more quickly from the federal government. Clearly it is important that any territory have the long-term potential in land and resources to become self-sufficient. For this reason, the Western Constitutional Forum has made the equitable division of land and resources a condition of its support for division.

In Summary . . .

1. The Objectives of the Western Constitutional Forum and the Nunavut Constitutional Forum for better government are much the same. Regardless of where the new boundary is located division alone will not achieve these Objectives. Nor is it necessary for all Inuit to be in one territory for these Objectives to be met.

2. It's important to reach agreement on the new boundary as soon as possible so that all the residents of the western territory can take part in developing their new government.

3. On its own Dividing *or not Dividing* the N.W.T. won't create a public government respecting the rights, traditions and values of both the original and non-native people. *With or without division, such a new government must be created in the North.*

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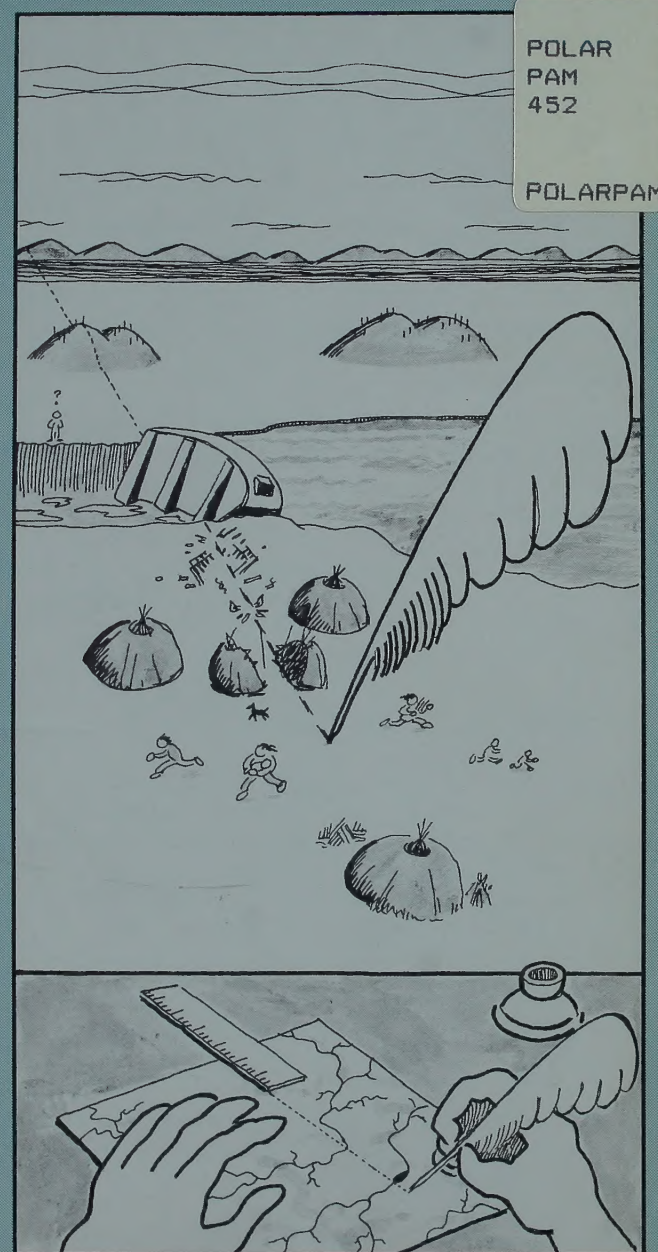
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10 DIVISION: PAST EXAMPLES



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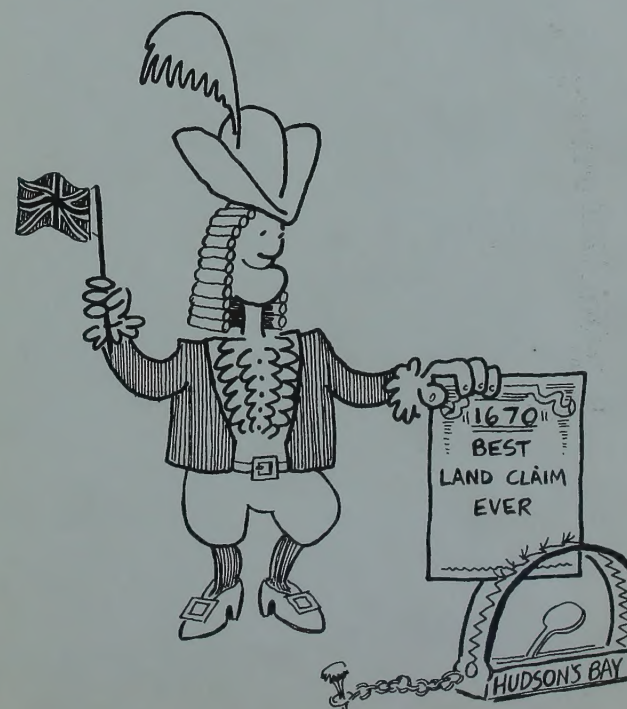
DIVISION: PAST EXAMPLES

Aboriginal Territories and Boundaries

Long before European settlement, aboriginal nations had their own system of territories and boundaries. Different tribes, peoples and families each had areas to hunt, fish and use the products of the land. Some areas would be used by everyone, some by different peoples at different times of the year. Often natural barriers such as rivers, lakes, mountains or oceans would be used as borders. Usually there would be a system of co-operation and shared use of resources along border areas.

Europe Claims the 'New World'

When England gave the Hudson's Bay Company the *Royal Charter of 1670*, the boundaries of the area granted were not even known. Instead, they were described as broadly as possible to include all lands which drained into Hudson's Bay along with any regions to which



"... they shall find entrance or passage by water or land out of the territories ... and with all the natives and people ... not already possessed by any other Christian Prince or State."

Dividing North America

In 1776 thirteen British colonies rebelled and formed an alliance called "The United States of America." They talked of their "Manifest Destiny" to expand control over greater and greater areas. In 1867 four loyal British colonies united to protect themselves from this expansion. With British approval they set up an alternate federation called "The Dominion of Canada."

Although Britain and the United States had agreed in 1818 to the 49th parallel as their boundary across the prairies, when Canada was formed there was still doubt as to whether the "North-West Territories" would ultimately become American or Canadian. The new Dominion of Canada immediately asked Britain to buy back the political rights to the Hudson's Bay Company's "North-West Territories and Rupert's Land" and so this vast area became part of Canada.

Manitoba and Louis Riel - 1870

Within the new Canada, the Western Metis now feared they would be over-run by farmers and settlers. Under Louis Riel they organized to protect their traditional life, hunting buffalo on the prairies. When the federal government ignored them they set up a "provisional government" of their own. The federal government responded with a tiny "Province of Manitoba."

The new boundaries were kept very small to ensure that Manitoba could not block transportation, communication and immigration to the Pacific. Manitoba pressed for a large enough area to support itself as a province and the boundaries were extended in 1881 and again in 1912.

British Columbia - 1871

At the same time the federal government feared that British Columbia, locked between Alaska and mainland United States, might join the United States. British Columbia agreed to join Canada when Ottawa offered to take over the colony's debt and build a railroad to the east within ten years. The ocean and mountains became natural western and eastern borders for the new province.

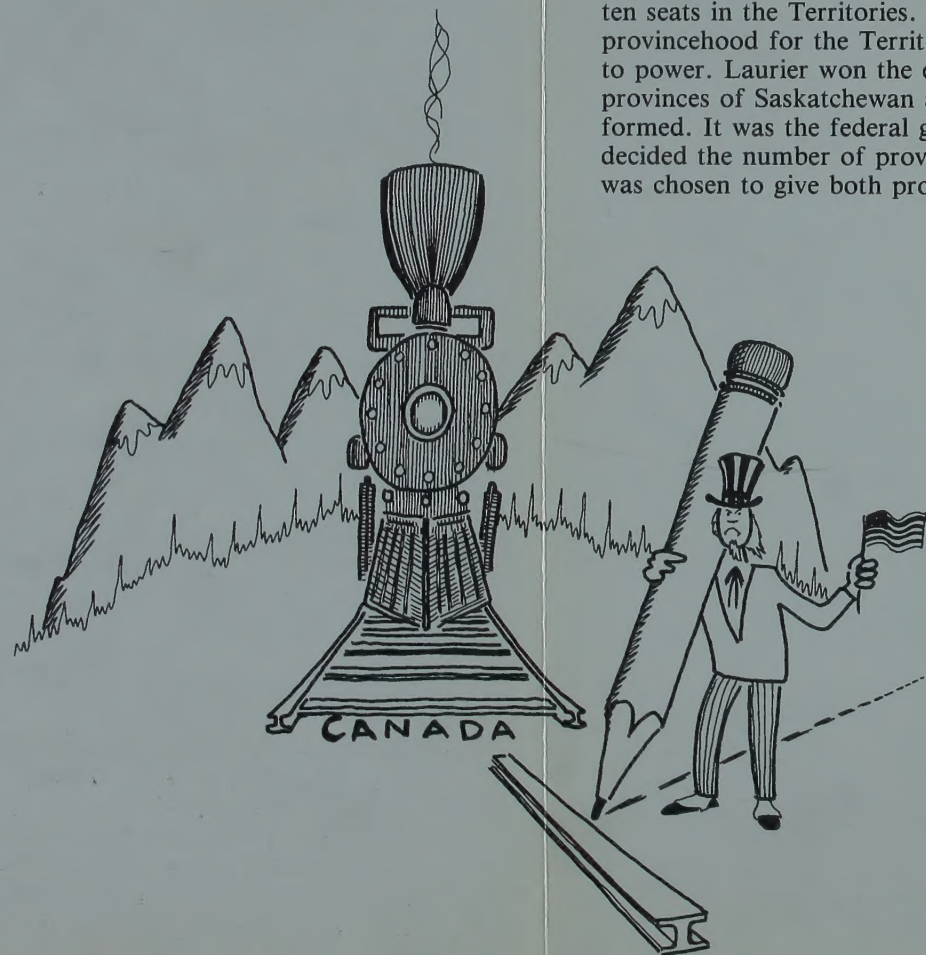
The Yukon and Gold - 1898

In 1896 George Carmack found gold in the bottom of a Yukon creek and soon thousands were making their way to the Klondike. The existing territorial government could not hope to administer services to the far off boom so the federal government unilaterally drew up boundaries for the new Yukon Territory. The continental divide and watershed became the division between the Yukon and Northwest Territories. A Commissioner was appointed to administer the territory from Ottawa.

At that time, the exact boundary between the Yukon and Alaska was under dispute and in 1903 the United States sent troops close to the border to pressure Canada. An international arbitration panel decided on the present border.

Saskatchewan and Alberta - 1905

The Canadian Pacific Railroad was completed to the Pacific in 1885, the same year Riel was hanged for leading an armed attempt to establish a Metis nation in Saskatchewan. With the promise of cheap, fertile land, the trains began bringing immigrant settlers.



A Legislative Assembly representing the new settlers soon began pushing for provincehood. A major question was division and boundaries: how *many* provinces should be formed?

A few Southern Albertans wanted to split their district into a province regardless of the rest of the territory. Others felt the territories should become two provinces, one in the north and the other in the south. Still others wanted one giant province. And there was a group (mainly from Prince Albert) who pressured for three provinces: north, southeast, and southwest.

NOT ENOUGH PEOPLE

For some time, the federal government resisted the push, suggesting that there would first have to be more than the 150,000 settlers. The original peoples were not considered relevant to this process! In 1903 Ottawa offered an increased annual grant to the Territories, but the Assembly was not satisfied. Prime Minister Laurier refused to budge an inch.

BUT ENOUGH VOTES!

1904 was an election year and Laurier needed the ten seats in the Territories. He promised provincehood for the Territories if he was returned to power. Laurier won the election and in 1905 the provinces of Saskatchewan and Alberta were formed. It was the federal government which had decided the number of provinces and their boundary was chosen to give both provinces an equal size.



Manitoba, Ontario and Quebec Enlarged - 1912

A new federal government was elected in 1911. Under its direction, the provinces of Manitoba, Ontario and Quebec were enlarged north to the shores of Hudson and James Bay and the 60th parallel to establish the present N.W.T. boundaries. Again, on its own the federal government changed territorial boundaries, this time at the urging of provincial businessmen interested in timber and mineral resources.

Some Modest Proposals

In 1937 British Columbia proposed annexing the Yukon Territory and in 1939 Alberta suggested extending its boundary north to the Arctic Coast. In 1965 Alberta suggested that all four western provinces extend their boundaries north to the Arctic. This is still possible under the present constitution of Canada.

Division of the Northwest Territories - 1963

In the early 1960's non-native residents of the Mackenzie district pressured for a smaller, western territory containing most of the non-native population. This area, they felt could more quickly achieve self-government. In response, the federal government prepared legislation for a boundary running north and south, east of Cambridge Bay. The proposal would have given the western Mackenzie five elected and four appointed members on a council based within the new territory. The

East would have had two elected and five appointed members on a council still based in Ottawa.

There was opposition to the proposal for the fact that there had been little consultation with those affected. Eastern residents also felt that the political powers they were offered were too weak. The legislation was not passed before the government was defeated.

Current Proposals for Division

The creation of *Nunavut* was first proposed as part of the Inuit Tapirisat of Canada aboriginal claim. Inuit, like other original peoples, wanted greater control over the development of land and resources and over their own cultural identity and aboriginal rights. Also, the Northwest Territories is a vast region and many residents of the east felt alienated from the geographically distant government capital in Yellowknife.

In April 1982, in a territory-wide plebiscite, N.W.T. residents voted fifty-six percent in favour of division. East of Cambridge Bay, division received strong support. West of Cambridge Bay there was considerably less support.

The Western Constitutional Forum supports division of the present Northwest Territories as long as such division does not restrict the development of greater self-government in the new territories.

Some Conclusions

1. Throughout North America borders and divisions have changed to reflect the changing society.
2. There has been no single factor determining divisions. Instead, these changes have occurred for a variety of reasons including:
 - pressure from growing settler populations
 - protection of Canadian sovereignty, (usually from the United States)
 - political gain for a federal party
 - economic and resource development
 - pressure from business interests
 - transportation and communication networks
 - administrative efficiency and effectiveness
 - geography
3. Other than in early Manitoba, aboriginal people have not been involved in this process.

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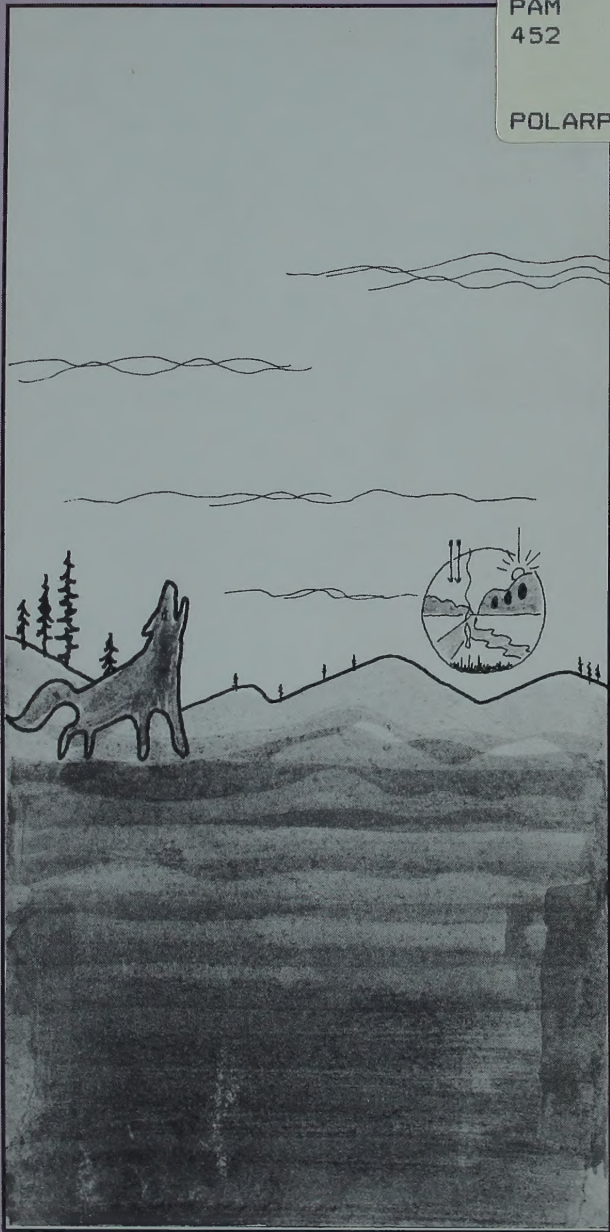
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9
DENENDEH:
A PROPOSAL



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DENENDEH:
A PROPOSAL

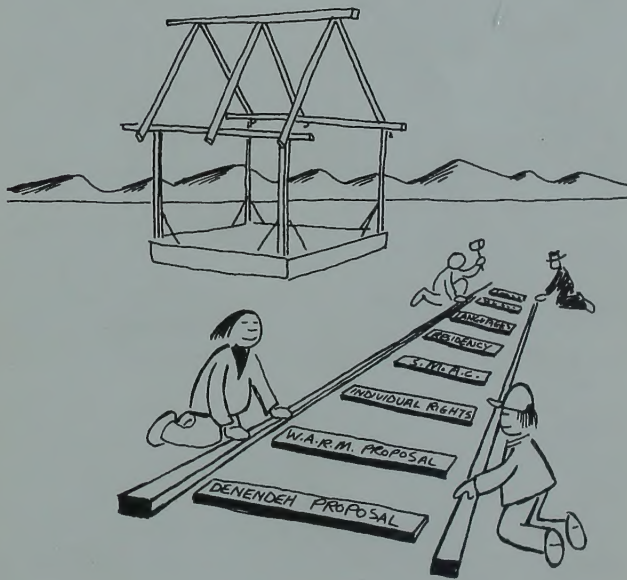
The Denendeh Proposal

"We propose that a new province-like jurisdiction
be created, to be called Denendeh, a Dene word
meaning the land of the people . . .

We seek, as essential to a just settlement of our
rights, a political system that will embody Dene
values, that will reflect the Dene style and form
of political organization, and that will provide a
just and efficient government for both Dene and
other Canadians in the western part of the
N.W.T. . . .

Under the new institutions that will be negotiated,
we will guarantee full political rights for
everyone."

— The executives of the Dene Nation and Metis
Association of the N.W.T., "Public Government
for the Peoples of the North", November 1981.



The Denendeh Proposal was prepared by the
executives of the Dene Nation and Metis Associa-
tion of the N.W.T. to contribute to the dialogue on
aboriginal self-government within a public govern-
ment system. It was the basis of much of the
discussion at the Legislative Assembly's 1982
Constitutional Conference, and contributed to the
consensus on several key issues which was developed
at that time.

The Denendeh proposal suggests a unique form of
government with "provincial-type" powers. It is
important for consideration by the Western
Constitutional Forum because it continues to
generate new ideas and discussion on the ways in
which aboriginal self-government might be achieved
within a public government process.

This pamphlet gives an outline of the proposal and
of some of the issues it raises.

One: Structure of a Denendeh
Government

The overall Denendeh government would be
composed of Community Assemblies & Councils, a
Denendeh Assembly and a Senate.

A: COMMUNITY GOVERNMENT

The Community Assembly will be the major
political body in each community. It will meet
regularly to:

- decide on by-laws, programs, services and
institutions required by the community.
- decide how people are chosen and choose
people to sit on the Community Council.
Within guidelines from the national assembly,
decide which issues require a community
referendum.

The Community Council will implement the tasks
assigned by the Community Assembly.

B: PROVINCIAL LEVEL OF GOVERNMENT:
The Assembly

The National Assembly of Denendeh will be the
major political body at the provincial level. It will
serve as a link to the community bodies, and could
be composed of local chiefs and community
representatives.

Guaranteed Representation: The Dene would hold at
least 30% of the seats in the Assembly.

It will meet at least four times a year to:

- decide on provincial level programs and
budgets.
- give direction to the Denendeh Executive.

C: PROVINCIAL LEVEL OF GOVERNMENT:
The Senate

The Denendeh Senate would safeguard the
aboriginal rights and interests of the Dene. It would
be composed only of Dene and would have power
to:

- veto any community or national assembly legislation adversely affecting Dene aboriginal rights.
- set up and run institutions to manage exclusive Dene lands and resources.

D: RESIDENCY

To vote or hold office in the National Assembly or Executive, a person must be a 10 year resident in the territory.

As well as being a 10 year territorial resident to vote or hold office in the community, a person must be accepted by the people of the community and be a 2 year community resident.

Two: Charter of Founding Principles

The government of Denendeh will operate within a Charter of Principles consistent with the Canadian Constitution which will:

1) Entrench the rights of the Dene to establish government funded institutions in areas such as:

- education from preschool to university; health services; social services; arts; media; recreation and games; training in traditional arts and crafts.

2) Entrench aboriginal languages, along with English as official languages in Denendeh.

3) Entrench harmonious relationship of the Dene with the physical environment as the basis for environmental laws.

4) Entrench a decision-making process whereby development projects ensure the *total well being* of the people and resources of Denendeh (as opposed to the economic benefit of the developers).

In addition the Charter will contain rights and freedoms similar to the International Covenant on Civil and Political Rights.

Three: Land and Resource Ownership

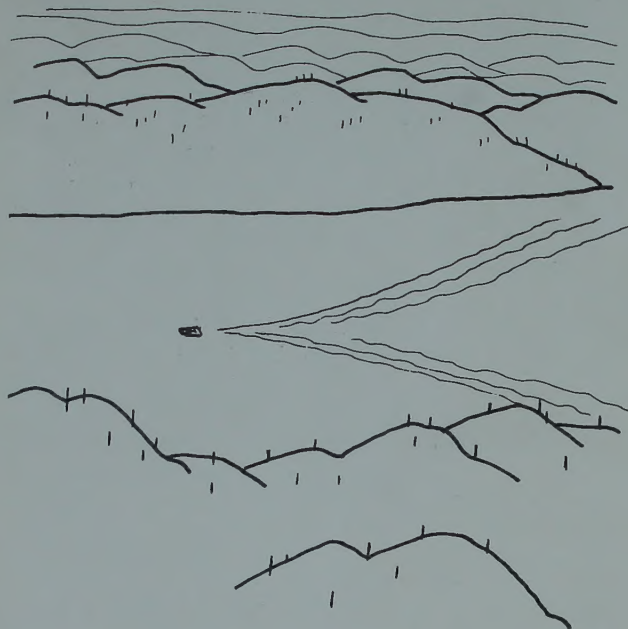
The Denendeh proposal states that under a new government, the resource and land-holding system of the Dene must be given at least equal status with that of the non-Dene. Three categories of lands are proposed:

1) **Exclusive Dene Lands:** The Dene will maintain exclusive ownership and control over a large area or areas of land within Denendeh. This land will not be subject to expropriation – that is, it could not

be taken for the use of any government. The Dene will manage these lands and revenue from them will belong to the Dene.

2) Land and Resources Controlled By The

Denendeh Government: Other than private land, the remaining land will be under Denendeh Government ownership and control. The Dene will have exclusive rights to hunt and fish on the land.



3) **Private Lands:** Present title will be honoured. In future, only long term leases will be granted.

Four: Government By Consensus

The Denendeh proposal suggests a consensus process both within the structures described earlier, and as a means of reaching agreement on a new form of government.

Based on traditional decision-making, consensus would replace debate or the adversarial approach. It assumes that people are different, with various inequalities, and that genuine agreement results from acknowledging, not denying those differences:

“There is no reason why discussion cannot replace debate. Discussion, underpinned by the concept of respect for rights and recognition that differences are a fact of life, makes it possible for everyone to contribute, to share, to learn and, on this basis, reach decisions.”

– The executives of the Dene Nation and Metis Association of the N.W.T., “*Public Government for the People of the North*”, Yellowknife, 1981.

Questions Raised By The Denendeh Proposal

1: COULD THIS PROPOSAL INCLUDE AREAS OTHER THAN DENENDEH HOMELAND:

The Denendeh Proposal calls for a *public government* within the Dene homeland. It could be a pattern for the recognition of Inuvialuit and Inuit aboriginal rights within a public government covering a larger geographic area as well, perhaps by including a regional system:

“The Dene would welcome a negotiated arrangement in which the Inuvialuit regional government would become an integral part of the Province of Denendeh and will seek to work out the details of such an arrangement with the Inuvialuit . . .”

– The executives of the Dene Nation and Metis Association of the N.W.T., “*Public Government for the People of the North*”, 1981.

2: IS TEN YEARS RESIDENCY REQUIREMENT TOO LONG?

The ten year residency requirement to vote or run for office has been strongly criticized. Critics have suggested it may go against the “Mobility Rights” of all Canadians as guaranteed in the 1981 Canadian *Charter of Rights and Freedoms*.

The 1982 Legislative Assembly Constitutional Conference talked of a two or three year requirement and agreed “. . . to extend residency requirements beyond one year to a reasonable amount of time permitted by the Canadian constitution . . .”

3: IS A SENATE EFFECTIVE?

The Canadian experience with Senates or “Second Houses” to represent regional or majority interests isn’t particularly good. Federally, the Senate has a reputation for being powerless and ineffective. Despite continuing attempts at reform, little change has been achieved.

The only provincial experience with a second house was in Quebec. Formed in 1867 to protect English minority rights, the body disappeared a century later amidst general indifference.

Rather than a body which can only veto or hold up legislation, would a strong guarantee of adequate representation in the decision-making of the Legislature or “first chamber” better protect aboriginal rights?

At the 1982 Legislative Assembly Constitutional Conference delegates agreed with the need for some mechanism to ensure that aboriginal rights are protected. They did not necessarily agree that a Senate is the best mechanism for this, however.

4: WOULD A SENATE RESTRICTED TO ABORIGINAL PEOPLE BE ACCEPTABLE IN A PUBLIC GOVERNMENT?

As proposed, the Denendeh Senate could veto any community or provincial-level legislation which “. . . adversely affects aboriginal rights.” Without a clear and restricted definition of aboriginal rights, this could theoretically cover almost any legislation.

While the WCF supports the guaranteed protection of aboriginal rights, including the possibility of areas of exclusive jurisdiction, should there be limits on the powers of non-public bodies to veto legislation?

5: HOW DO PARTY POLITICS FIT WITH A PROCESS OF CONSENSUS?

If political parties organized at the provincial level, how would they work within a consensus decision-making process? Party politics assumes a debating style with one party in power and one or more opposing. Could this style co-exist within a consensus process?

6: HOW SHOULD LAND BE OWNED?

The Denendeh proposal suggests that land-holding systems of the aboriginal peoples will have to be recognized at least equally with those of the non-natives. The proposal suggests that the southern forms of individual and private land ownership are not suitable for a new western territory. While respecting land which is privately owned at present, the proposal suggests that in future, all aboriginal people should share ownership of their lands, while the remaining land will be owned by the Denendeh government.

A system of land ownership will be one of the important areas where non-native and aboriginal peoples will need to work out an agreement.

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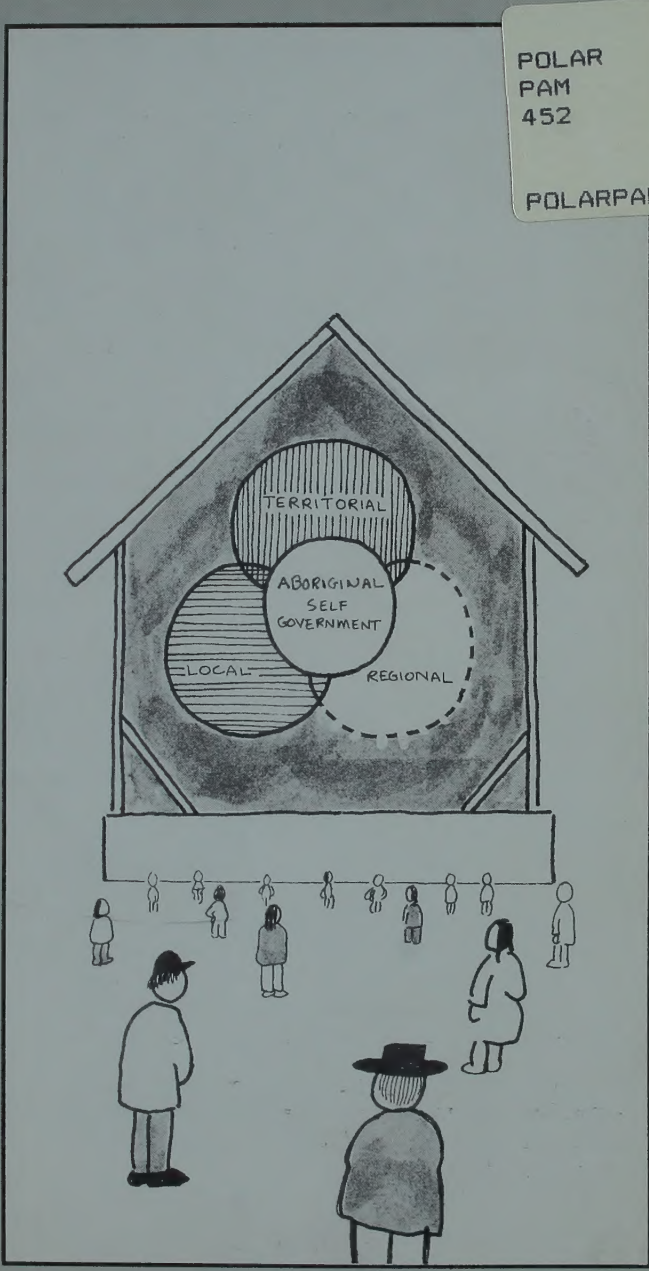
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8
BALANCING
POWER IN
THE NORTH



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BALANCING
POWER IN THE
NORTH

Distribution of Powers Within a New Territory

Within the north, there is a growing demand for more powers to the communities and regions. The original peoples are seeking recognition of their rights to control their own lands and resources, languages and cultures. Aboriginal and non-native leaders, Territorial Government officials, and community residents pretty much agree that it's time to consider a redistribution of powers within the north.

The 1982 Constitutional Conference of the Legislative Assembly recommended that government decision-making should rest as closely as possible with those governed. It also said that every level of government must have the power, authority and resources necessary to carry out its responsibilities.

Redistribution to Whom?

Northern Government could be re-organized in a variety of ways. The question is who should legitimately get more power and who should not. There are two aspects to this question:

First, there are potentially three levels of government in the north: 1. The Communities, 2. Possibly Regions, and 3. The Central (Territorial) Government.

Second, at each of these levels, what special interests, if any, are exclusive to aboriginal peoples?

We will discuss how a redistribution of powers and jurisdictions might affect each of these areas:

One: The Communities

It's probably hard to find anyone in the north opposed to communities gaining more power. However, there are still decisions to be made on how communities should exercise increased power.

WHO MAKES DECISIONS IN THE COMMUNITY?

Just as when power is transferred from the federal government to the north, when communities gain more power it is important to agree on how that power will be shared in the community.

FORMS OF COMMUNITY GOVERNMENT

In many communities there have been both Band and Settlement Councils. Traditionally the Band Councils have represented the status Indians, sometimes Dene and Metis, while the Settlement Councils have represented non-natives and original peoples, without special regard for aboriginal rights. Some communities are developing new governments which combine both Band and Settlement Council functions.

COMMUNITY ASSEMBLIES VERSUS REPRESENTATIVE GOVERNMENT

Some communities are exploring the use of Community Assemblies. Rather than just having decisions made by elected representatives, traditional forms of consensus decision-making may allow for wider community involvement. There is still a need for elected leaders but they are more directly responsible through the Community Assembly.



GUARANTEED REPRESENTATION, LANGUAGE RIGHTS AND RESIDENCY

Within the communities, should aboriginal peoples have guaranteed involvement in public government? Such protection might include guaranteed aboriginal seats, special language rights or residency requirements for the community. Are there special areas such as renewable resources, or language and culture which are exclusively aboriginal jurisdictions?

JURISDICTION OF COMMUNITY GOVERNMENT

Northern communities will probably require powers different from those held by southern municipalities. For example, to what degree should education, culture, renewable and non-renewable resources be under community control? Are there other areas that should also be included? How big a land area should be under community jurisdiction? Are the standard municipal boundaries acceptable or should community lands used for traditional pursuits be included as well? What powers should be shared with a central government?

LIMITS TO COMMUNITY FLEXIBILITY?

The ideal would be for each community to decide for itself what kind of local government it wants, how it will operate and how much responsibility it will take on. Should there be limits to how differently each community government can look and operate?

Two: The Regions

WHY GIVE MORE POWER TO THE REGIONS?

Community and Regional Governments must be considered together, in relation to each other. The purpose of redistributing power to the regions is not to build strong regional levels as ends in themselves, but to strengthen each community within the region.

If Regional Governments are created, they might represent local interests in a united way easier and more effectively than each community can do on its own.

COMMUNITIES MAY NOT BENEFIT

Strengthening the Regional Councils/Governments is not necessarily a good thing, however. Community people may or may not gain power by the creation of another level of government. If that level of government is not well understood or if it is very complicated, it could further confuse the average community resident.

Some Important Questions

Before deciding how much power regions should have, you might want to consider these questions:

ONE: WILL COMMUNITIES GAIN OR LOSE POWER THROUGH THE DEVELOPMENT OF REGIONAL COUNCILS/GOVERNMENTS?

On one hand, higher levels of government may end up just consulting regional councils instead of each community. A few regional councillors may end up with a lot of power while the average community resident has less.

On the other hand, regional councils can have more power and influence than any community on its own. Together, communities can share information, analysis and experience which is of benefit to all. Regional councils might provide a bridge between large and small communities, native and non-native people, as well as among different aboriginal peoples. There may also be activities such as language and cultural programs which only a region can undertake effectively.

TWO: WHAT RELATION WILL REGIONAL COUNCILS/GOVERNMENTS HAVE TO LAND CLAIMS SETTLEMENTS?

To avoid confusion, regional political structures will need to be co-ordinated with other structures such as regional corporations which may evolve from land claims settlements.

THREE: WHAT LEGISLATIVE AUTHORITY MIGHT REGIONS HAVE?

Basically like municipal governments, regions could have whatever powers higher levels of government are willing to give them. For example, community governments are given powers to pass by-laws concerning a variety of related issues. Generally in the Canadian tradition, governments below the provincial level make limited decisions with the provincial government keeping some control.

How much law-making authority, if any, do Regions require in order to achieve their purpose?

FOUR: WHAT FISCAL AND BUDGETARY (MONEY) POWERS MIGHT REGIONAL GOVERNMENTS HAVE?

Can a regional government be effective without its own direct source of revenue? Could regional governments levy taxes or otherwise raise their own money? How would this power be shared with communities and with the territorial government? If some regions had a lot of resources while others had little, is there a danger of creating “rich regions” and “poor regions”? Would this wealth be shared among other regions?

FIVE: TO WHAT EXTENT SHOULD LANGUAGE, CULTURE, TRIBE AND RACE INFLUENCE REGIONAL BOUNDARIES?

In the past one hundred years, aboriginal societies have been overwhelmed by the influx of non-natives and their systems and culture. In an effort to regain pride and control, the original peoples are organizing to maintain and develop their own unique cultures. This is their legitimate right, supported by the Western Constitutional Forum.

At the same time, however, does this mean that regional governments should follow essentially racial or tribal boundaries? Is there a danger that over time some regions might become wealthier than others, and these economic differences may get destructively expressed as racism or tribalism?

Three: The Central or Territorial Government

THE PRESSURES WHICH DIVIDE

The new western territory will include a vast area but relatively few people. Geography, history, language and culture keep the residents separated. At best, transportation and communication are more expensive and less-developed than in the rest of the country. There are many pressures which will tend to isolate people.

TOO MUCH COMMUNITY POWER?

Because northern communities have had such little control, it may be difficult to imagine how they might ever have too much.

However, suppose the growth of individual community or regional powers leaves a weakened territorial level of government. Each community cannot afford all the resources – the environmentalists, the lawyers, the expertise – it requires to protect itself. Transnational corporations or even the federal government might find it tempting to “pick off” the communities one by one to get what they want negotiating special deals with each community, perhaps even leaving the communities fighting among themselves for more benefits. In the end individual communities or Regions have much less bargaining power than a responsible central government.

RESPONSIBLE NOT WEAKER GOVERNMENT

Given the history of a territorial government created by and primarily responsible to Ottawa, perhaps the real issue is to create a central government which is more representative of and more responsible to northern aboriginal and non-native residents – a government by, of and for northern peoples.

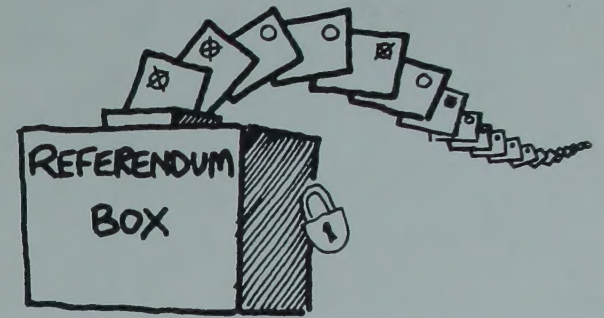
A primary objective of the Western Constitutional Forum is to create a government which both *is* and *is felt to be* responsible to northern peoples. Might not the creation of such a government reduce some of the need to devolve powers to the communities?

Otherwise, might just giving more powers to the communities or regions once again allow outside forces to direct territorial-level decisions? Clearly, there is a need for balance.

Aboriginal Self-Government

The recognition of collective aboriginal rights involves all three levels of government. It includes land and resources, wildlife, hunting and trapping, self-government, culture, language and education.

The aboriginal claims negotiations will not deal fully with all of these areas. They will focus to a large degree on land, resources and wildlife, and may deal somewhat with language, and social areas. However the federal government has stated that it will not address the basic idea of self-government through the claims.



Therefore it is necessary to consider ways of guaranteeing aboriginal self-government within the public government system. Mechanisms such as guaranteed representation, entrenched language rights, and other methods to protect aboriginal rights can be considered at all three levels of government.

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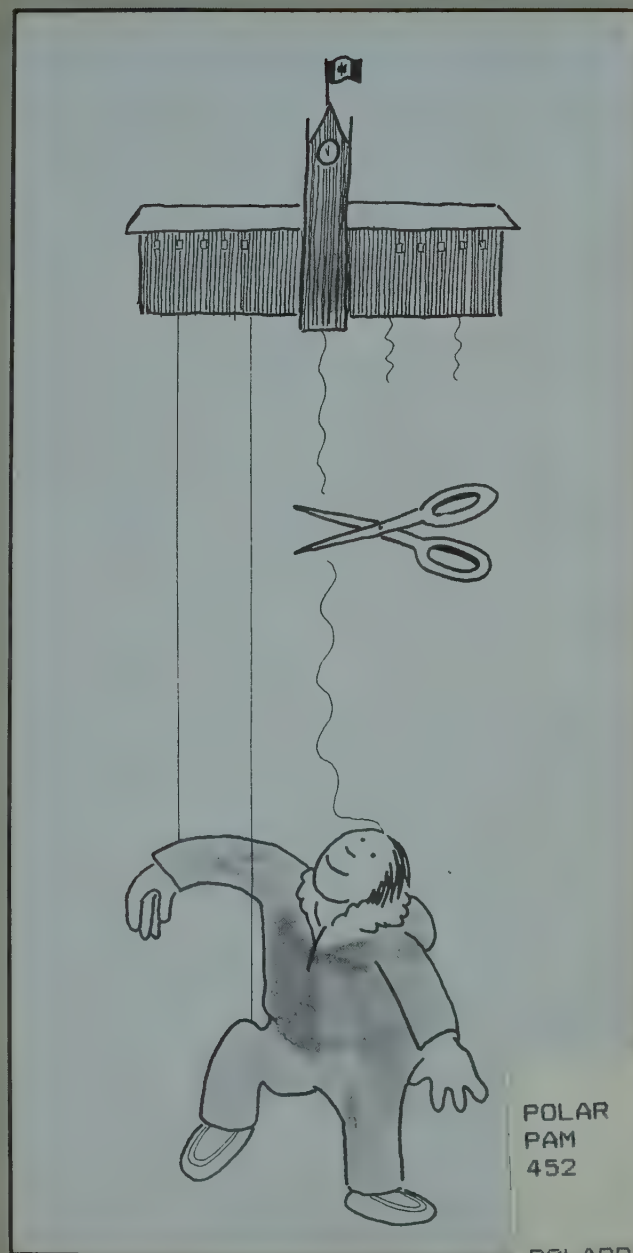
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7 TOWARDS PROVINCIAL STATUS



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TOWARDS PROVINCIAL STATUS

More Power to the North

"In the last ten years, northern Canada has experienced a dramatic political evolution, compressing into a single decade developments that took much longer to unfold in southern Canada . . . [However] Ultimate constitutional power lies with the government of Canada which has far too much at stake in the North to relax its hold on any of the powers that might affect its ability to realize its goals in the North."

— Gurstan Dacks, *A Choice of Futures*, 1981.

At some point, northern territories will become new provinces. All northern peoples agree that further powers must be transferred to the north. However, support for this by aboriginal people is first conditional on:

1. the recognition and affirmation in law of ownership of aboriginal lands and resources through the claims process,
2. the recognition and affirmation in law of the right to aboriginal self-government through a new public government constitution. This point relates to efforts to amend the Constitution Acts of Canada as well.

Even so, provincial status is not likely to be achieved in the near future. The federal government clearly wants to keep control over most non-renewable resources and large-scale development. At the same time however, there are areas where Ottawa may be willing to consider transferring provincial-type powers, areas affecting the social and cultural life of northern society.

What's the Difference?

Under the *Constitution Act*, (previously called the *British North America Act 1867*) it was agreed that Canada would divide its legislative powers between the provinces and the federal government. There are important differences between provincial powers and the powers of the present Northwest Territories:

1) Territories Administered by Ottawa: Under the *Constitution Act 1867*, provinces have exclusive

areas where they have powers which the federal government cannot over-rule. Not so for the N.W.T.! Instead, as decided in 1971, territories are administered as part of the federal government:

"The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province."

— *Constitution Act, 1871*.

2) Provinces Headed by an Elected Premier:

Although provinces technically have a Lieutenant-Governor appointed by Ottawa, in fact this position is just ceremonial. The provincial government is actually under the direction of an elected premier, who is the head of the party with the most seats in the legislature. The premier appoints a Cabinet from among the elected members of his/her party to run the various Departments and in this way the whole government is said to be responsible to the residents.

Within the N.W.T., a Commissioner heads the government. This person is chosen by and responsible to the federal government, not the residents of the N.W.T. While he/she accepts the direction of the Executive Council on most issues he/she is not just a figure-head like a Lieutenant-Governor, for in fact he/she is the Chairman of the Executive Council.

3) Control Over Land: Perhaps one of the most critical areas for the north! Provinces have the right to use, sell, manage and tax most land within their boundaries. Territories do not. This is a vital difference considering the non-renewable resources of the north.



Both the federal government and the aboriginal peoples claim ownership over northern lands at this time. It is critical that aboriginal claims in this area be settled before transfers are made.

The federal government has transferred small areas of land around each settlement to the Government of the N.W.T. in a Block Land transfer. Even these small transfers have caused problems because they did not take into account aboriginal interests in the land.

4) Provinces Can Amend their Own Constitutions: Again, provinces have power to make changes in their own government structures, but a territory can only be changed by the federal government, in our case by amendments to the *Northwest Territories Act*.

5) Provinces Can Borrow Money: A province is allowed to borrow money on its own. A territory can only borrow with the approval of the federal government.

6) Other Areas: There are a variety of other areas, such as forestry, inland waters, labour laws, some areas of criminal law, the right to an Attorney General and the right to set up certain kinds of companies, where provinces have powers which territories do not. In fact, control over wildlife is the only resource transferred to the north to date.

A Gradual Transfer

Although we think of other provinces as suddenly going from a situation of no power to their present full provincial status, often the change has really been more gradual. There are many examples of such gradual transfer of federal powers and jurisdictions.

A number of provinces joined confederation with a much smaller geographic area than they presently control. Manitoba, for instance, was originally known as the “postage-stamp” province because of its tiny size. Alberta and Saskatchewan became provinces in 1905, but it was not until 1930 that they gained control over their non-renewable resources.

Gathering Momentum

Similarly in the Northwest Territories there has been an ongoing transfer of power and jurisdiction from the federal government. After years of neglect, in 1951 the first N.W.T. residents were elected to the Territorial Council, and in 1967 the territorial administration moved to Yellowknife. The Territorial Council became fully elected in 1975, and since that time the transfer of power to the north has been gathering momentum.

The decade of the seventies was marked by increased aboriginal political involvement and in 1979 aboriginal residents formed a majority in the Legislative Assembly. The federal government has since transferred greater powers to the Legislative Assembly, including an elected Executive Council, with elected Ministers for all departments except Personnel. An elected Minister of Finance marks an increased role in setting spending priorities. As of 1979, the Commissioner no longer sits in formal sessions of the Assembly.

A Delicate Balance

One factor affecting the transfer of powers to the territories is the dynamic balance between the federal government and the provinces. This tension has existed since Canada’s birth.

Originally the federal government saw the provinces having relatively little power. The federal government, through the Lieutenant-Governor had the power to disallow many provincial laws and between 1867 and 1896, sixty-eight provincial laws were disallowed. For instance, Manitoba railway legislation was disallowed when it infringed on the Canadian Pacific Railway; a Prince Edward Island land act was disallowed when it seemed unfair to the owners.

The Rise of Provincial Rights

Over time, however, the Courts began to rule more in favour of the provinces, protecting the areas where provinces had exclusive rights and reducing the areas where the federal government had overall power for the “general welfare.”

Today there is still a tension between the provinces and the federal government with neither side willing to give up powers to the other. Thus the federal government is very hesitant to transfer power to the north, particularly to create new provinces, because this might shift the overall federal-provincial balance more in favour of the provinces.

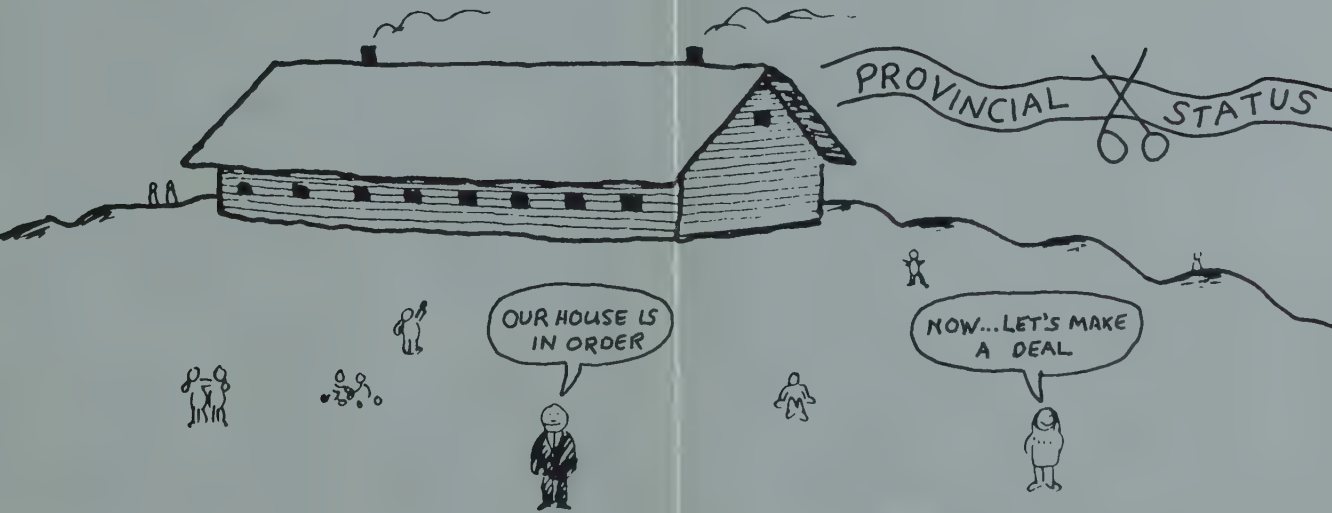
As well, the federal government simply doesn’t want to give up control over the rate and timing of resource exploitation. Control over non-renewable resource development is the source of much of the federal power to influence the energy policy of the country. The federal struggles over off-shore development with the provinces of Nova Scotia, Newfoundland and British Columbia demonstrate this concern.

In addition, the federal government would like the potential tax revenues from these non-renewable resources.

A Strategy for Change

Still, the inevitable evolution towards provincial status within the north is underway. The federal government has made various changes in its relationship with the N.W.T. to treat it more like a province. What it is not willing to give up at the present time is its control over mega-projects and non-renewable resources. It is also not willing to formally declare new provinces.

Rather than pressing now for provincial status, it may be better strategy to continue to expand the present territorial form of government in areas vital to northerners. The process of gradual transfer can result in recognition of provincial status when most of the appropriate powers have already been transferred.



For You, a Special Deal!

Although they all have roughly the same legal powers, different provinces have negotiated various special agreements with the federal government. British Columbia, for instance, was guaranteed a railroad connecting them to the east. Quebec was guaranteed special language and education rights.

To move towards provincial-type status, northern residents must now decide on the unique requirements for more responsible government in this society. To reflect northern reality, provincial status here will again be different than any other existing province.

Starting Now

To move towards this ideal, it may be possible to create many of the new arrangements before gaining full provincial status. The WCF is attempting to create a structure and style of government somewhat different from that which exists in the southern provinces. It may be easier for the rest of Canada to formally accept unique northern practices if they are already in place and functioning, rather than just being proposed.

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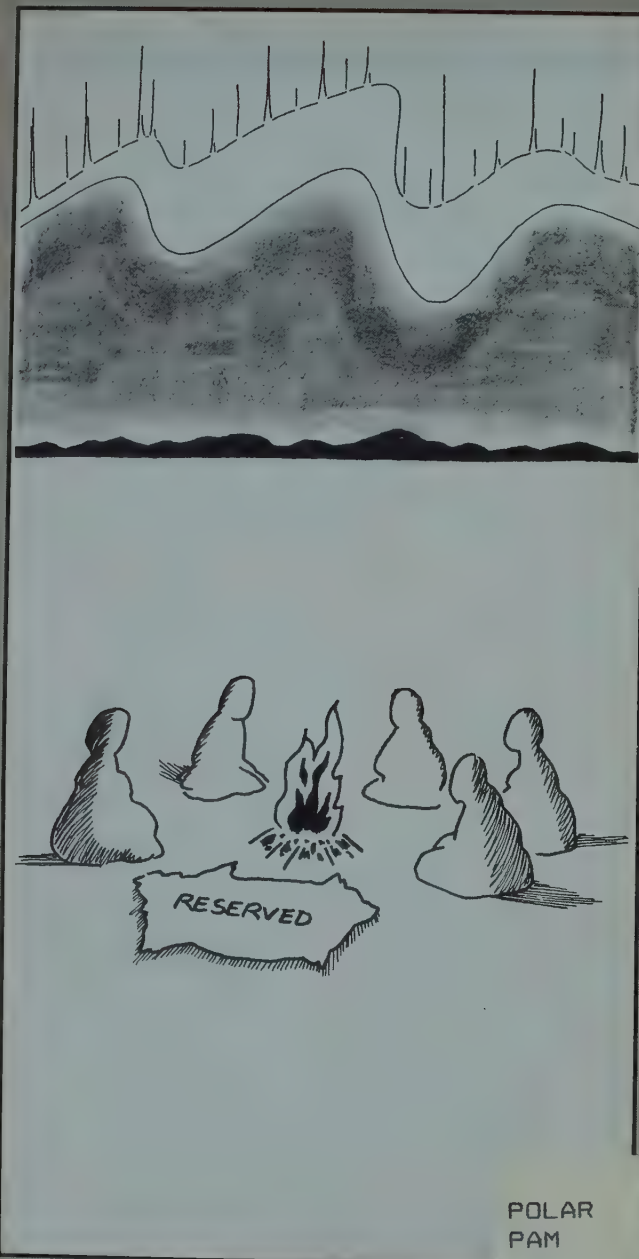
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6 Guaranteed Representation



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GUARANTEED REPRESENTATION

"The Aboriginal members of the WCF assert that their right to aboriginal self-government is an undeniable fact and that a part of what we are doing in the WCF as we develop a new constitution is creating certain mechanisms and practices in government which will entrench aboriginal self-government as a component of public government."

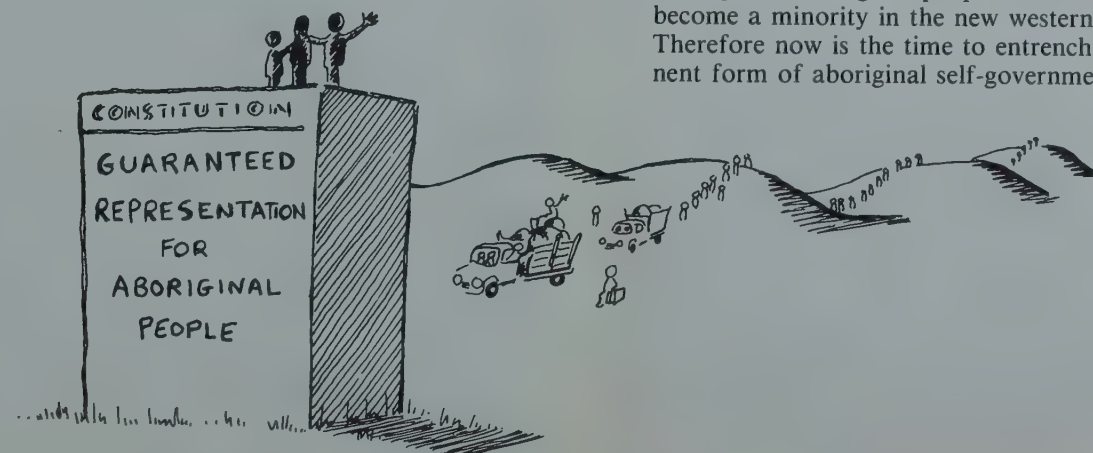
— Bob MacQuarrie, Vice-Chairman, WCF,
Address to the Standing Committee on Indian
Affairs, March 21, 1984.

What is Guaranteed Representation?

Guaranteed Representation is one way to help entrench aboriginal self-government within a public government system. It could be combined with other approaches.

Specifically, Guaranteed Representation refers to structures and processes which guarantee a certain part of the society involvement and representation in the government. In the North, it refers to guaranteeing continued aboriginal representation in a public government.

At the 1982 Legislative Assembly Constitutional Conference, there was unanimous agreement that some form of guaranteed representation for aboriginal peoples should be included in any new form of government developed in the Western Northwest Territories. The WCF is considering how this might be achieved.



Do Other Countries have Guaranteed Representation?

Many countries guarantee participation of all groups within the governing institutions. This can be done within liberal-democratic government systems. For example, in *New Zealand* the aboriginal Maoris are guaranteed seats in the legislature. In *Switzerland* the French minority has two ministers, and the Cantons of Basel and Zurich are guaranteed permanent representation. In *Belgium* most matters are decided by a national parliament. However, explicit areas of jurisdiction are controlled by regional, linguistic and cultural councils, each elected and made up exclusively of members of ethno-national groups identified in the constitution.

Thus, a variety of liberal-democratic countries similar to Canada have mechanisms for guaranteeing the representation of all groups in the governing process.

Even in Canada You Say?

Canada was created with a vision of recognition of special cultural-nationalities within an overall system of liberal-democracy. The *British North America Act* of 1867 guaranteed French rights, ensuring strong Quebec representation in the federal Senate and on the Supreme Court. Within *Quebec* a provincial second house (Senate) was set up to protect minority English rights. As well, *every province and territory* is guaranteed at least as many members in the House of Commons as in the Senate.

Now is the Time

At the moment aboriginal peoples have a majority of seats in the Legislative Assembly. However, it is predicted they will sooner or later become the minority just as in southern Canada. If division takes place, aboriginal people will immediately become a minority in the new western territory. Therefore now is the time to entrench some permanent form of aboriginal self-government.

What Kinds of Guaranteed Representation?

ONE: THE LEGISLATURE

The ‘First House’ or Legislature is where elected representatives govern and pass laws. Here are some ways to guarantee continuing aboriginal representation in the Legislature:

A) Guaranteed number or percentage of seats: The Denendeh document suggests for instance that thirty percent of the seats be guaranteed for aboriginal peoples. How might these seats be distributed; to all aboriginal peoples together, or separately to individual aboriginal groups? These seats could be chosen in several ways. For instance an aboriginal person could have the option to vote for either the aboriginal or non-native seats. Another way would be for aboriginal voters to have two votes – one for a regional aboriginal representative as well as one for a conventional seat.

B) Representation by Community: Here each community would be directly represented. A concern might be that delegates would be more involved with community issues rather than with overall national interests. If each community had the same number of seats, representation would not correspond to population.

C) A Combined System: A combination of A and B. This should ensure both aboriginal and regional representation. However, it would be more complicated.

D) Proportional Representation: This means representation in proportion to the votes received. Any group (party) could run their own candidates. Aboriginal people could run their own candidates and they would get a percentage of seats corresponding to the percentage of overall vote they get. Thus if they get forty percent of the overall vote they would have forty percent of the seats, without necessarily getting the highest vote in any single constituency.

E) Strict Residency Requirements: Who is eligible to vote and run for office? In the western N.W.T. long-term residents, native and non-native, face the possibility of being outnumbered and overwhelmed by an influx of transient outsiders. The Denendeh document proposes a ten year residency. The 1982 plebiscite on division had a three year residency. At the same time the *Canadian Charter of Rights and Freedoms* guarantees all Canadians the right to live and pursue work anywhere in the country. The Legislative Assembly Constitutional Conference agreed that a residency of more than one year is required.

F) The Canadian Status Quo: At the moment, whoever wins in each riding gets a seat in the legislature. On its own, this system provides little protection for minorities.

TWO: A SENATE OR SECOND CHAMBER

A Second Chamber (a Denendeh Senate or some other body) has been proposed to review legislation concerning Aboriginal Rights. Representatives might be elected or appointed to such a body. Would this chamber review all legislation that concerned original peoples or just traditional hunting, fishing and trapping issues? There is concern in Canada that the present federal Senate is not very effective and needs to be reformed. If a Second Chamber is created with guaranteed aboriginal representation, what powers should it have?

THREE: ABORIGINAL CHAMBER WITHIN PUBLIC CHAMBER

All aboriginal representatives within the Chamber(s) might gather together in an official *Legislative Committee on Legislative Rights for Aboriginal Peoples*. Such a committee could initiate or veto legislation concerning aboriginal peoples.

FOUR: PARTICIPATION IN AMENDING THE CONSTITUTION

If the specific political rights of northern aboriginal peoples are to be protected they must be entrenched in a new government’s constitution. To further assure this protection aboriginal people must be guaranteed involvement in making changes to the constitution. Such involvement could be through referendums, through local/regional participation in an amending process, or through a guaranteed role for the Legislative Assembly, (right now the Northwest Territories Act is controlled by the Federal Government!). Perhaps a double majority would be necessary to make constitutional changes – this would mean approval by a majority of aboriginal peoples as well as approval by an overall majority of northern voters.

FIVE: THE USE OF REFERENDUMS

Referendums allow for more direct involvement of all residents. Therefore, they may be included as an option in the new government arrangements. However, they also raise questions:

- Who could initiate referendums?
- Would the subject matter be limited?
- Would just a majority of overall votes win or would there need to be a percentage of aboriginal approval, or approval in different regions?

In general, if referendums are used too often, could residents get tired of them? Second, would elected representatives tend to take fewer risks if their decisions were always subject to public referendum? Third, might referendums promote division among residents if different peoples vote in different ways? Referendums do allow for more direct involvement of all residents in decision-making. On the other hand, referendums allow for only black and white, yes or no responses. They allow little room for working out new solutions or compromises.

protection would be to entrench local and possibly regional governments in the constitution, perhaps with certain powers and jurisdictions.

NINE: LANGUAGE GUARANTEES

Language rights within a new government can both affirm the recognition of distinct aboriginal peoples as well as ensure their representation within the various aspects of government.



SIX: THE EXECUTIVE BRANCH

Government on a day-to-day basis is conducted by the Executive, its civil service, its boards and agencies, and its ministers. Thus it is important that aboriginal people be guaranteed involvement in these areas, including in the Cabinet, the civil service, and on various boards and agencies. As well, there could be a tradition of rotating the position of Commissioner, later Lieutenant Governor, between an aboriginal and non-aboriginal person.

SEVEN: THE ADMINISTRATION OF JUSTICE

How and to what degree should traditional aboriginal “custom laws” be involved in a new judicial system? Should a separate aboriginal court system be set up for certain issues?

EIGHT: COMMUNITY AND REGIONAL GOVERNMENT

Aboriginal peoples must continue to be involved at these levels. Land Claims settlements may set up some of the framework for such structures. One important long-term protection for strong community government is a strong representation in the central territorial government. Another

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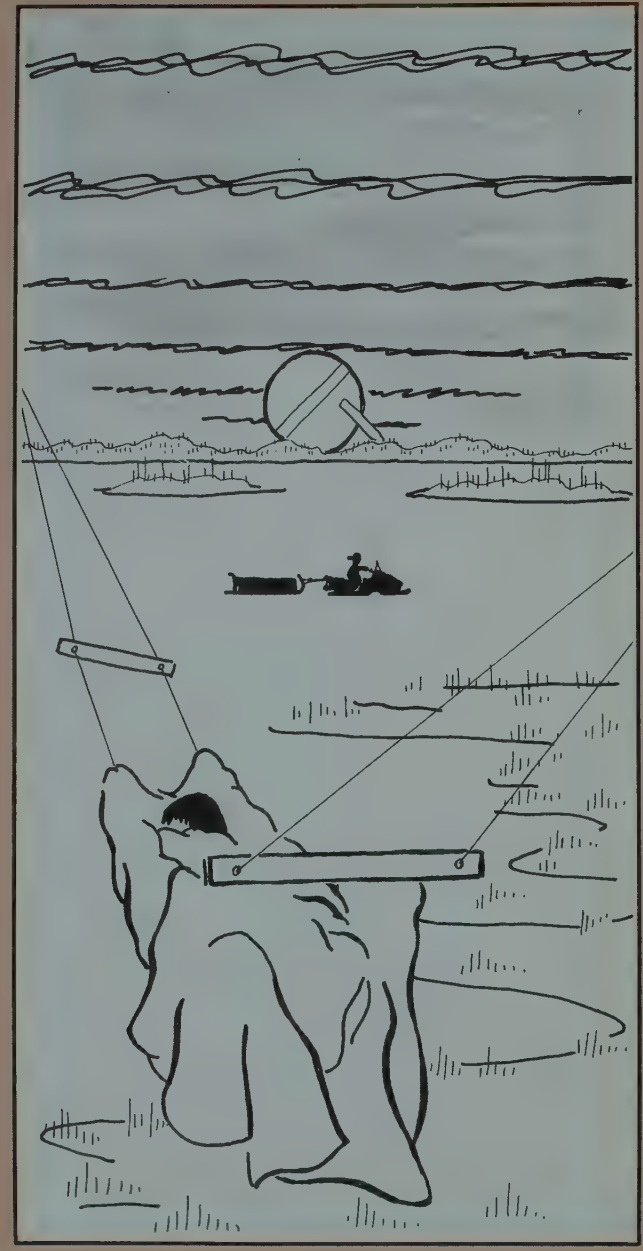
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5
ABORIGINAL
RIGHTS



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ABORIGINAL
RIGHTS

“Aboriginal rights are simply the rights to
which Native peoples are entitled because they
are the original peoples of Canada . . . To
recognize aboriginal rights is to understand the
truth of our own history, while, for the Native
peoples, such recognition is the means by
which they may achieve a distinct and
contemporary place in Canadian life.”
— Thomas R. Berger, *Fragile Freedoms:
Human Rights and Dissent in Canada.*

The WCF and Aboriginal Rights

The Western Constitutional Forum must address the
protection of Aboriginal Rights within a new form
of public government. This pamphlet looks at
Aboriginal Rights: What are they? Where did they
come from? What do they mean today?

When It All Began: The European Land
Claim

When the European explorers first arrived in North
America, they found aboriginal civilizations already
developed. At times the Europeans called these
nations inferior or uncivilized but, in 1763, Britain
formally recognized the aboriginal peoples by a
Royal Proclamation. Among other things the
Proclamation called for harmonious relations with
the “Indian tribes or nations” within and around
the new British colonies.

The Royal Proclamation was important because it
recognized Indian self-government and set out to
develop a system of peaceful cooperation between
two very different cultures in which neither would
dominate the other.

Canada's First Indian Policy:

Aboriginal Rights and Wrongs!

In 1670 the king of England gave the Hudson's Bay
Company control over the people and fur-trade
within the vast North-West Territories. In 1870 the
Bay surrendered this control to the Canadian
government. The aboriginal people were never
consulted about either of these transactions and to
this day have never given their consent.

The new Canada wanted to encourage farmers and
settlers to the “last, best west,” and so soon after
the Dominion of Canada was created in 1867, a
series of Treaties were signed with the Indians of
the newly acquired Northwest Territories (now
Manitoba, Saskatchewan and Alberta, as well as the
present Northwest Territories).

Signed by the Queen or her appointed Deputy, the
new treaties had legal force. They are evidence that
Canada through Britain recognized aboriginal rights
to the land. By then the plains Indian tribes had
been weakened by starvation and disease. The large
buffalo herds had been slaughtered and in the
American west the U.S. Cavalry had waged war
against the Sioux. Without money or supporting
laws, the treaty rights were ignored and of little
benefit.

Within the N.W.T.

Soon more and more non-natives began to explore
and settle in the North. With the Yukon gold rush
in the late 1800's and the oil-find in Norman Wells
in 1921, Treaty parties were sent out and returned
with Treaties 8 and 11 and applications for Half-
breed scripts. There were no agreements negotiated
with the Inuit.

The Caveat Court Case 1973

The methods of treaty negotiation were
questionable, however, and the Dene chiefs did not
believe they had given up their rights to the land.
They therefore initiated a court action in 1973,
stating that their interest in the area had not been
extinguished by the treaties.



TWO VERSIONS OF HISTORY

Judge Morrow, who heard the case, listened to a
number of Dene elders from up and down the
Valley who, in their youth, had witnessed the
negotiation of the treaties. They testified that peace
and friendship, not surrender of land were the terms
they understood and signed. In his judgement,
Justice Morrow concluded:

"I am satisfied that those indigenous people . . . are owners of the lands covered by the caveat — that they have what is known as aboriginal rights."

While eventually the Supreme Court of Canada ruled that technically a caveat could not be applied, Morrow's position on aboriginal rights was unchanged. As a result, the Dene and the Metis, like the Inuit are negotiating their claims under the government's comprehensive claims policy, that is, the category of claims where no treaties were signed.

Patterns in Recognizing Aboriginal Rights

1. Over the years, the federal government has taken an "On again, Off again" approach towards aboriginal rights. When an aboriginal nation served an important military or economic function, their rights as nations were respected; when their lands became valuable to settlers, however, their rights were either bargained away cheaply or denied altogether (as in B.C. and the Maritimes).
2. Since Confederation, government has had an "Either - Or" approach: *either isolation on reserves or assimilation* (loss of distinct culture). As a result the vast majority of aboriginal people on and off reserves continue to live outside the mainstream of political and economic



ISOLATION

life. Government has never encouraged aboriginal values and traditions within the public political and economic institutions of the country. This option still exists within the Western Northwest Territories.

3. The government has a poor record for respecting both the spirit and the letter of past treaties. Obligations are interpreted as narrowly as possible, if not ignored entirely.
4. Both the Executive and Legislative branches of government have tended to deny Aboriginal Rights completely. For example, a 1927 Act of Parliament made it a criminal offence for aboriginal peoples to pursue their claims against the government in the courts. More recently, the government's 1969 White Paper attempted to do away with all aboriginal rights in one fell swoop. This paper proposed taking Indian lands from collective ownership and instead giving fee simple title (private ownership) to individual Indian families. It also recommended doing away with the Department of Indian Affairs and thus having aboriginal people treated like any other individuals, with perhaps some compensation for giving up special rights.



ASSIMILATION

5. The Courts tend to recognize aboriginal rights only after crucial issues have passed. For example, the James Bay people couldn't maintain their injunction to stop the construction of a dam on their land. When their claim was finally recognized, all that was left was the issue of compensation — the dam was already built.



DIFFERENT AND EQUAL

6. Recently, there appears to be some changes in the traditional patterns of dealing with aboriginal rights: native organizations have been formed and funded; the government has begun to negotiate comprehensive and specific claims; some recognition of aboriginal rights has been included in the constitution; the government has shown some willingness to consider aboriginal self-government. However, it is still too early to tell if these trends will produce concrete and lasting results.

What Do Aboriginal Rights Mean Today?

In many ways Aboriginal Rights mean the same today as they did when the first European stepped onto North America, or when Britain declared her historic *Royal Proclamation* of 1763: they are the collective right of an aboriginal people not only to survive, but to flourish and develop as self-determining peoples.

As such, Aboriginal Rights include the rights to ownership and control of land and resources, self-government, culture, language, education and rights with regards to wildlife.

Under the Constitution

Aboriginal Rights have been recognized under the new *Canada Act* of 1982. They are undefined however, and there are different interpretations on how much protection is afforded to these rights through Section 35 of the constitution. To date Section 35 has not been tested by the courts.

There will be two more Constitutional Conferences with aboriginal peoples to discuss what will be entrenched. The major item on the agenda of aboriginal representatives is the entrenchment of the right to self-government. Legislation to this effect was introduced in the House of Commons, but too late in the session to be passed.

In the south, aboriginal self-government is mainly a question of separate development — an exclusive government on an exclusive land base, called a reserve. In the North, however, the challenge is to create aboriginal self-government within a public government system.

Aboriginal Rights and the Land Claims Process

Through comprehensive Land Claims negotiations, aboriginal peoples can negotiate for a land and resource base adequate to serve their needs. The

federal government has said, however, that it is not willing to negotiate political rights through the Land Claims process. Therefore, to get recognition for the political structures necessary for collective and cultural survival, northern aboriginal peoples must use other approaches.

The Western Constitutional Forum - A New Alternative

The WCF recognizes that aboriginal peoples are distinct peoples within Canada and that they have collective rights to maintain themselves as such. Members of the WCF recognize the need for an alternative to the southern reserve system which can better serve the peoples of the North.

The Challenge

Aboriginal Rights questions have faced every settler society throughout the world. The Northwest Territories has a unique opportunity to build a society which neither assimilates nor isolates its original peoples. The challenge facing all northern residents is to develop a system of government which guarantees the right of aboriginal peoples to maintain their distinct status, within a public government accessible to all residents.

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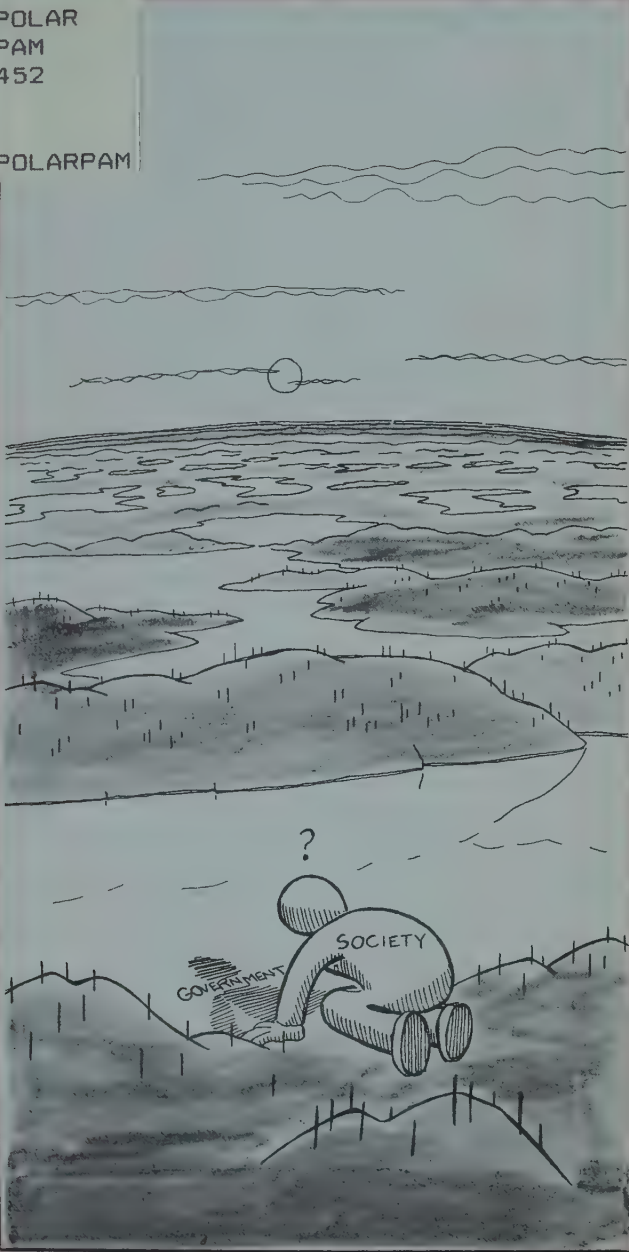
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4

WHAT IS NORTHERN SOCIETY?

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WHAT IS NORTHERN SOCIETY?

The Nature of Society in the N.W.T.

Have you ever thought of time as flowing like a river? Suppose the Mackenzie River from Ft. Providence to Inuvik represented the length of time that aboriginal people have been in the north. Then along the whole length of the river, it would be only in the last ten or eleven kilometres that non-natives have come here. It would be only in the last four or five kilometres that Canada, as a country, has existed.

Aboriginal people have lived in the Western Northwest Territories for the past 25,000 to 30,000 years. Non-natives arrived within the last 200 to 300 years. Today, Dene, Metis, Inuvialuit, Inuit and non-native people are working out arrangements by which they can live together with respect for each others' traditions.

What in fact are those traditions and values? How are they different? This pamphlet explores the liberal-democratic government tradition of non-natives and uses the traditional Dene system as an *example* of aboriginal government. The Inuit have their own unique, though similar, forms of traditional government. Metis have evolved as a distinct people as well.



Traditional Dene Government

The governments developed by the original peoples reflect their closeness to the land. Indeed, the structure of government and group decision-making changes with the cycle of the seasons. The life of the traditional Dene is typical; in spring and summer larger groups gathering at fish-camps, in fall family groups moving out to their winter hunting grounds. The extended family is the important social unit within which individuals experience life and discover their relationship with the land and the people.

Laws and Leaders

Traditionally, social order was maintained through observance of a code of laws which governed daily living, including the way food was handled, the way the home and the fire were tended, the way children were raised and taught, and the way elders were cared for and respected.

Decision-making was integrated into this family and tribal life in such a way that there was no separate or specialized group which formed a "government". Instead, laws were developed and maintained by consensus among everyone. Leaders were chosen for understandings and skills valuable to the group – perhaps in providing food, safety, or spiritual leadership and vision. Each family would have at least one such leader and in larger gatherings of several families, the heads of families would confer together. Elders, medicine men, warriors and accomplished hunters might figure prominently in the discussions.

Sometimes consensus was not achieved. Conflict might arise over rights to certain hunting areas, or between men jealous of the same women.

Later with contact, different tribes developed conflicting allegiances to different traders. The peace agreement of Edzo and Akaitcho between the Dogribs and Chipewyans stands out as an exceptional resolution to such inter-tribal conflict.

Traditional Values

- 1. **Sharing:** - the land and its products, food, medicine, shelter, extended family home, work, responsibilities in the family, care of children, health care.
- 2. **Respect:** - for oneself, for other people, leaders, elders, special skills; for the land and all living things.
- 3. **Caring:** - for members of extended family, self and others; in particular for those less fortunate: -widows, orphans, elders, safety and protection of self and others in the home.
- 4. **Equality:** - of all people and other living creatures.
- 5. **Self-Respect and Pride:** Everyone has reason to respect him/herself and take pride in contributing to the family and community.

Some Traditional Dene Principles

- 1. The survival of the whole group (family, community) is more important than the accumulation of individual wealth or status.
- 2. Individual rights and freedoms are respected and encouraged within the larger, more important context of a collective responsibility for the survival and well-being of the entire group.
- 3. Respect and care for each other: in particular, honour and caring for elders and children.
- 4. No one individual has the right to own the land. As beings who come from the land, all have a shared right to the land and its resources. There is also a responsibility to protect the land for future generations.
- 5. There is respect and honour for both men and women and for the contribution both make towards the survival of the people.
- 6. Everyone has the right to be heard and to take part in the decision-making process or discussions which affect them.

In General . . .

While these values and principles are common to many cultures, in traditional Dene society they were *essential* to the ongoing survival of the people and thus were more fully a central part of the society.

Euro-Canadian Government Tradition

Because Canada was formed from British Colonies, her government follows the European tradition of “Liberal Democracy.” This is the government tradition of most non-natives in the north.

Basic Concepts of Liberal-Democracy

Although European explorers and settlers have arrived only recently, they bring with them forms of government which go back much further. Nearly a thousand years ago in England, there was a struggle to set limits on the power and authority of the king. After losing a battle to his subjects, the king was forced to sign an agreement, the Magna Carta, stating that he was not above the law, but must follow the laws like any other citizen. From the struggle to limit the powers of the king come many of the basic assumptions still important to Liberal-Democracy:

Individualism

Individualism is the belief that the individual – rather than God, the Queen, the tribe or some other subgroup – is the fundamental building block of the society. Society must be structured to promote the individual’s right to pursue happiness and to realize her or his potential.

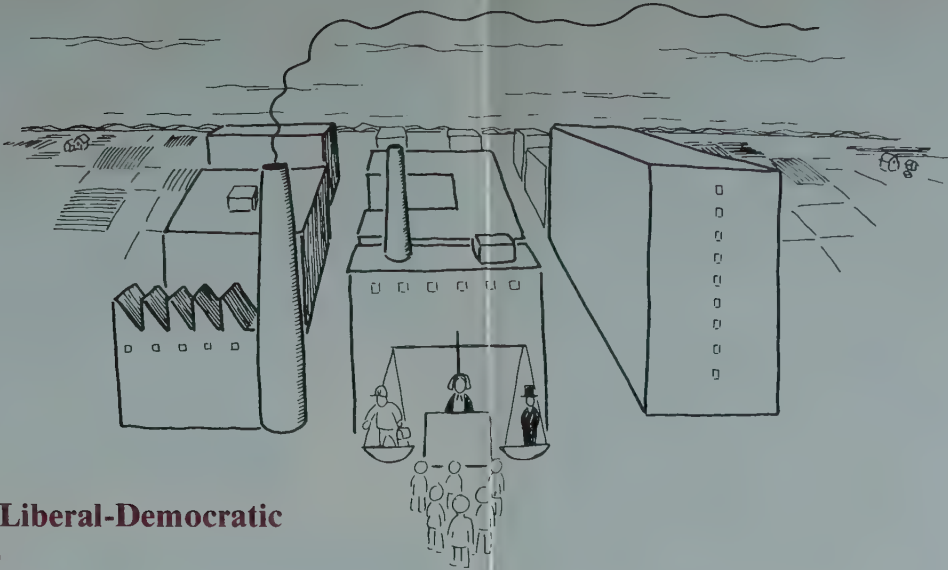
Equality

Legally, all individuals have equal rights. There is no good basis for discriminating in favour of certain people over others. Whether Queen, Church-leader or Peasant, each person is equal under the law.

Moral Relativism: Is There a Right and Wrong?

Different people have different beliefs and points of view about things. People may hold their values very strongly, but they are still just values, not ultimate truths. Neither the State nor the Church nor anyone else has a “divine right” to tell others what to think or do. These different interests, or pluralism of modern society, ensure that a variety of views and proposals will be expressed on any one issue.

The role of government is not to judge which is “right,” but rather to allow the ideas to compete with each other and to be freely expressed. Government should ensure that the point of view with the most support is the one to prevail.



Structure of Liberal-Democratic Governments

Over the years, Liberal-Democratic governments have evolved as society has become larger, more complex, and more specialized. The development of an industrial, market-economy encouraged the view of the individual as separate from family, tribe or other affiliations.

Today, such governments have three distinct and separate arms:

- 1. **The Legislature** is where elected representatives pass laws which govern the society. Within the constitution it has the final say (or “sovereignty”) over issues in society. In Canada, the legislature cannot make laws which limit the rights of individuals as found in the *Constitution Act* of 1982, although Provinces can opt out of certain clauses of this Act, and the Act could be amended in the future.
- 2. **The Executive** is responsible to the Legislature to administer and put into effect its laws. To help with this work, it controls a bureaucracy or civil service.
- 3. **The Judiciary** is separate from the Legislature and the Executive and is responsible for the legal and court system. Judges and courts must impartially apply the laws to different situations.

Elections

In a big, complex society, everyone cannot get together at one meeting to decide on issues. Elections give the citizens control over the representatives they choose to decide for them. Elections must make the legislators feel responsible to the citizens and sensitive to their wishes.

Elections are held regularly with each citizen’s vote having equal value.

And In Conclusion . . .

A good government reflects the nature of the society which it governs. Before the Western Constitutional Forum can design a government, it must reach agreement on the nature of the society in the Western N.W.T.

Obviously, current northern society is not the same as traditional aboriginal society. There has been a loss of the total control once exercised. Resource development, the centralization into communities, the move from independence to dependence on government, the church, education, new technology – all these and more have created a new reality. Cultures have evolved. The situation prior to contact no longer exists. At the same time, many of the traditions, values and practices continue, systems and forms are maintained.

Similarly, the north is not a classic liberal-democracy. Rather, it is a resource hinterland where the ‘usual’ rights and freedoms of the citizens have sometimes been secondary to the maintenance of firm federal control. Full liberal-democratic self-government does not exist in the north, although the non-native population similarly holds many of the values and forms of this tradition, without all of the power.

To develop a good government for a new western territory, there is a need to recognize and respect the realities, the histories and the dreams of all citizens. There is a need to agree on both what exists now and on what people hope to create. The mutual understanding of the present society can become the solid foundation on which to build a new, more responsible northern government.

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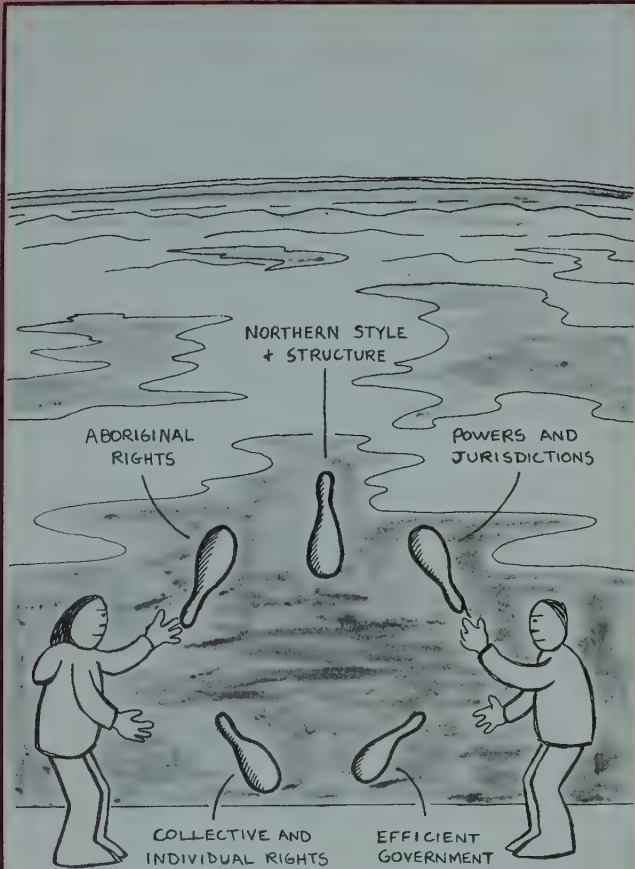
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3
WHAT ARE
THE ISSUES?



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PRINCIPLES,
PROBLEMS AND
OBJECTIVES

Why Make Changes?

"Every time we try to do something, within the system . . . it doesn't seem to work for us . . . We tried to use it, it doesn't work for us . . . we're going to keep on trying to use the system until we get frustrated enough that we're going to try changing it. I think that's where it's directed."

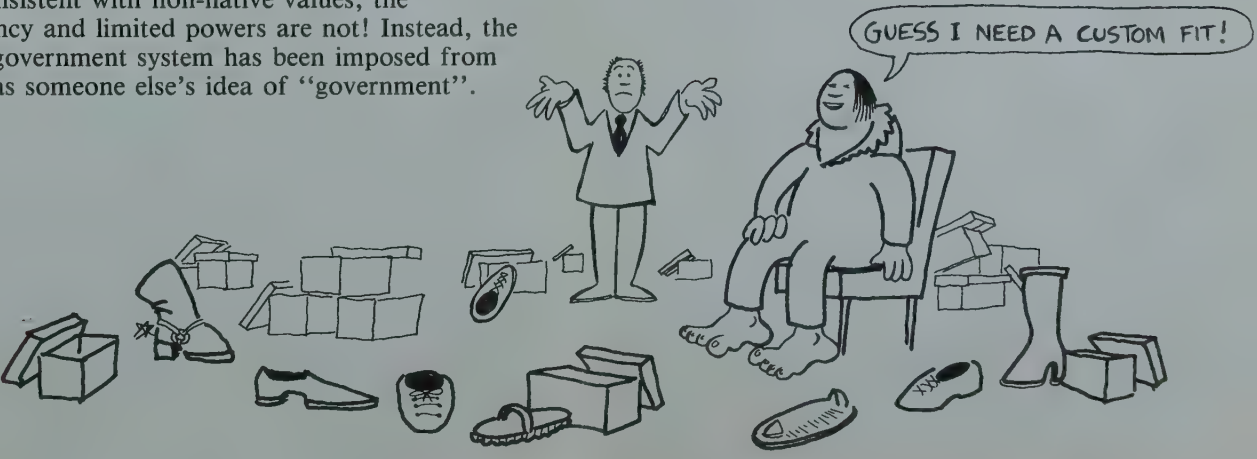
– Chief Jim Antoine, Fort Simpson, Evidence to the Berger Inquiry, 1976.

Over the years people have been pretty frustrated with northern government. They've been frustrated with how it treats aboriginal people; they've been frustrated with how it's controlled from Ottawa. They've been frustrated with how complicated it seems. They've been frustrated with how little power they have in it.

It's because of problems like these that the **WESTERN CONSTITUTIONAL FORUM** was created. The WCF is working with residents in the Western Northwest Territories to develop a new kind of northern government, a government which is different in some pretty important ways:

One: Structure and Style of Government

Right now, government in the north doesn't really reflect the traditions and values of northern, particularly aboriginal peoples. In fact it's doubtful that it fully reflects the traditions of most non-natives. Although the general structures may be more consistent with non-native values, the dependency and limited powers are not! Instead, the present government system has been imposed from outside as someone else's idea of "government".



Good government reflects the society of which it is a part. It should feel like it belongs to everyone, that it deals with everyone's concerns, in ways all understand. All residents should feel that this is "Our Government", that when it speaks, it is "Our Voice". The challenge is to create such a government in the Western Northwest Territories.

DEVELOPING OUR OWN GOVERNMENT

Part of the task is to develop new structures at the territorial level – perhaps a legislature and government which guarantee a certain number of aboriginal seats, maybe additional structures within government to guarantee the protection of aboriginal rights.

It may mean more flexibility for community and regional structures. What fits the tradition of one region may not suit another. How much freedom can different regions and communities have to set up their own structures, and still fit into the same territory? What powers should the territorial government retain for itself?

WITH OUR OWN STYLE

The challenge is also to develop a new *style* of government, a style which is aboriginal as well as non-native. This may mean more use of aboriginal languages in government. It may mean consensus decision-making as a part of the public government process. Such possibilities raise many questions: do party politics fit into such a style? Should plebiscites be held? On what issues? Are there ways of changing not just decision-making, but the delivery of government services to be more fitting to local customs?

Two: The Protection of Aboriginal Rights

Not since the time of Louis Riel have the aboriginal peoples been involved in negotiating for the territorial or provincial administrations of which they are a part.

Over the years, Canada has made agreements with various aboriginal peoples, and yet, regardless of how well-intentioned the dominant society may have been at the time, effective guarantees have not lasted. In time the pressure of increased settler populations or the lure of resource development has become more important. Aboriginal people are outnumbered and pushed aside. They may be given reserves on which they have some powers. However, with no real voice in the public government, they are isolated and ignored.

Through Land Claims negotiations, the original peoples of the north hope to gain legal and lasting recognition of many of their rights. In addition, through the constitution of the new western territory as well as through the constitution of Canada, they hope to entrench their political rights and further protect their claims settlements.

AS LONG AS THIS LAND SHALL LAST

What kind of system can be developed to recognize and entrench for the future, the special rights of the original peoples? In the end, perhaps the greatest protection is the continuing, active involvement of aboriginal people themselves in the general public government.

How might a new public government guarantee such an ongoing aboriginal presence? The 1982 Constitutional Conference of the Legislative Assembly agreed that some form of guaranteed representation should be included in any new government.

The WCF is committed to addressing the question of how collective aboriginal rights can be actively entrenched within a system of public government.

Three: A Balance Between Individual and Collective Rights

At the heart of Aboriginal Rights is the right of the aboriginal peoples to be distinct peoples. It is the right to enjoy unique systems of culture, language and ways of life not just as individuals but collectively as peoples within Canada. To maintain this identity as a people, aboriginal systems must not be overwhelmed or smothered by another society. There must be special arrangements to ensure an ongoing collective survival.

One such arrangement may be guaranteed aboriginal representation in various public government institutions. Another may include longer northern residency requirements for people to vote or hold office. Such requirements would ensure that old-time residents would be protected from a sudden influx of transients. They would recognize the need for a period of time for new residents to appreciate the unique characteristics of northern society.

While such arrangements would protect the collective rights of the original peoples, at the same time all Canadians are guaranteed certain individual rights. Under the 1981 *Canadian Charter of Rights and Freedoms* for instance, every Canadian has the right to live and to try to get work in any part of Canada. Thus residency requirements must respect both the collective rights of the original peoples and the individual rights of all Canadians.

DIFFERENT TRADITIONS

In general, aboriginal tradition emphasizes the collective well-being while Euro-Canadian legal tradition, on the other hand, emphasizes individual rights. With some notable exceptions, such as for French-Canadians, the Euro-Canadian system gives less recognition to the rights of groups or nations.

What arrangement would recognize both the collective, aboriginal rights of the original peoples as well as the individual rights and freedoms of all Canadians? The Western Constitutional Forum is seeking such an arrangement for a new western territory.

Four: Efficient and Effective Government Service

In designing new government arrangements, one must not forget the reason for the exercise! A good government must reflect its peoples' concerns, make decisions effectively and have those decisions carried out. It can efficiently deliver a variety of services to the people it serves. In an area as large as the Northwest Territories, with its harsh climate, its limited transportation network and its small, diversified population, this is no easy task! There are two main considerations to keep in mind:

IT'S A BIG LAND!

First, is the reality of northern geography. Cultural differences may contribute to people feeling distant from the present government. *However, many people may feel distant from the present government because in fact they do live a long way from the capital.* If the Northwest Territories is to be divided, it makes sense to consider the geographic distance residents will be from their new government

headquarters. It also makes sense to consider the traditional transportation and communication routes. Efficient, cost-effective government depends partly on having people and goods travel easily throughout the region.



NOT MORE GOVERNMENT!

Second, some people already complain that the north is the most over-governed part of Canada with more government "per person" than anywhere else. In considering new options, it is important not to create such a confusion of boards, committees and levels of government that no-one can get anything done. Citizens must know where to go to get services and how to have decisions made quickly. There is a risk of trying to protect various rights and interests by creating such a variety of new bodies that people end up confused and government service is in fact slowed down. More government is not necessarily better government!

TOWARDS PROVINCIAL STATUS

The two new governments created if division of the present Northwest Territories occurs must each have the potential to provide efficient, effective and accessible government services as they develop towards eventual provincial status.

Five: Powers and Jurisdiction

To date, northerners still have gained little control over their territories, regions, and communities. Sometimes it seems like all the decisions are made somewhere else — by the federal government or by multi-national corporations — and northerners can only react. Instead of creating their own plans, northern residents must fit someone else's design.

BRINGING POWER HOME

The Western Constitutional Forum agrees that northerners should make many of the decisions presently made outside the north. It welcomes agreement on a continuing transfer of power from the Federal Government to a new western territorial government. Eventually, the new territory will become a province.

SHARING POWER HERE

At the same time that powers are transferred to the north, there is a need for agreement on how these powers are distributed among the people here.

There are two special concerns:

First, is the special right of the aboriginal peoples to have greater control over their own lives and cultures.

Second, as agreed by the Legislative Assembly's Constitutional Conference, government decision making should rest as closely as possible with those governed. Every level of government must have the power, authority and resources necessary to carry out its responsibilities.

Within the new territory an agreement, almost a treaty, must be reached among the residents indicating how people will live together. Such an agreement would say how decisions will be made and by whom. It will provide a framework for people to work together towards their own self-determination.

Objectives of the WCF:

"When it comes to the preparation of a new constitution, the WCF and the Nunavut Constitutional Forum share the same Objectives:

First is the development of a *Structure and Style of Government* which reflects the cultures and the values of each territory's unique population.

Second is the conscious and active recognition and *protection of Aboriginal Rights*.

Third is the establishment of an appropriate *balance between individual and collective rights*.

Fourth is the development of an *efficient and effective government service*.

Finally comes the *steady transfer of powers and jurisdictions* from the Government of Canada to the new territories as each evolves towards provincial status."

— Bob MacQuarrie, Vice-Chairman, WCF, Address to the Standing Committee on Indian Affairs. March 21, 1984.

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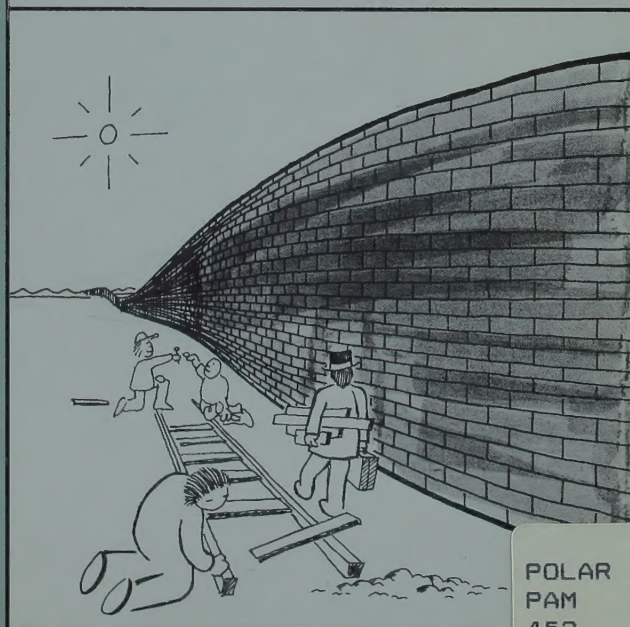
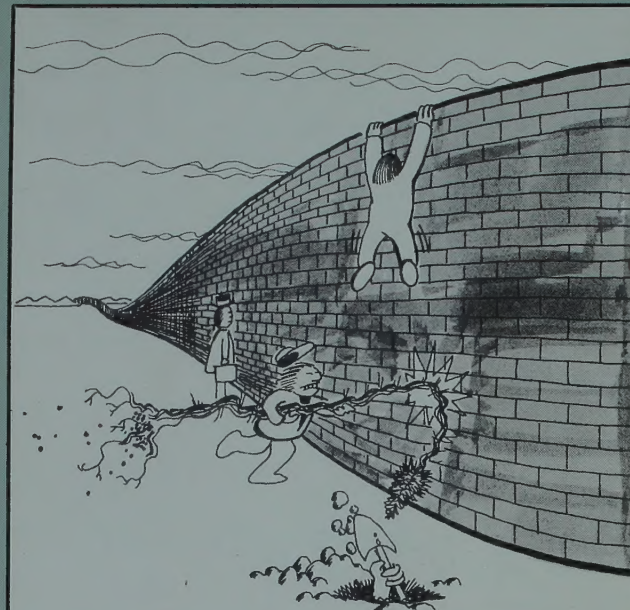
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2 WHY THIS APPROACH?



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WHY THIS APPROACH?

What's Going On Here Anyways?

In 1905 when the southern part of the Northwest Territories became the provinces of Alberta and Saskatchewan, the aboriginal peoples of the region were not involved in deciding on the new government. As a result, the provincial governments spoke mainly for the settlers as did the Territorial Government established to administer the remaining Northwest Territories.

From this tradition, the Territorial Council, now Legislative Assembly, has until recently approached political development without much concern for aboriginal rights and involvement.

Land Claims Negotiations

Aboriginal peoples have expressed their political hopes through their own organizations. Through Land Claims negotiations, they have tried to develop governments which would respect aboriginal rights and traditions. The Federal Government, however, has said it is not willing to negotiate political development through the Land Claims process.

Divided We Stop

Thus, there have been two separate political development processes going on at the same time, for the same area — one for non-native settlers through the Legislative Assembly and one for the aboriginal peoples through their own organizations.

Each group has come to realize it cannot get much further on its own. Non-natives cannot develop a government without respecting the rights of the aboriginal majority and at the same time the original peoples cannot develop a government solely through claims negotiations without public involvement.

Why Don't They Get Together?

Glad you asked, because that's exactly why the Constitutional Alliance was formed in February, 1982! Several members of the Legislative Assembly got together with the leadership of the Dene Nation, Metis Association of the N.W.T., the Inuit Tapirisat

of Canada, and the Committee for Original Peoples' Entitlement (COPE), to develop a cooperative, non-competitive approach to constitutional development. The Inuit Tapirisat of Canada agreed to join on the condition that the Alliance support division of the Northwest Territories in the upcoming plebiscite. The other members agreed.

Creation of the Western Constitutional Forum

In the April, 1982 plebiscite, voters east of Cambridge Bay strongly favoured division while those west were less in favour or actually opposed. Overall, however, a fifty-six percent majority of votes favoured division and as a result two sub-groups of the Constitutional Alliance were formed: The Western Constitutional Forum (WCF) and the Nunavut Constitutional Forum (NCF).

The Western Constitutional Forum includes representation from aboriginal and non-native members of the Legislative Assembly, the Dene Nation, and the Metis Association of the N.W.T. The Committee for Original Peoples' Entitlement has the option to participate in both forums and is presently a member of the NCF. Coppermine has appointed an unofficial representative to the WCF. The Kitikmeot Regional Council has asked that member to keep them informed.

What Does The WCF Hope To Accomplish?

Because the Western Constitutional Forum membership reflects the society of the western Northwest Territories, the forum hopes to get everyone involved in deciding the political future of this area.

The WCF believes a number of questions must be addressed. How can a public government be created which actively protects both collective Aboriginal Rights as well as the individual rights of all residents? At the same time, how can this new northern government gain significant powers from the Federal Government?

A New Kind of Treaty?

Yes, in some ways the task is similar to writing Treaties — one treaty between the aboriginal peoples and the non-native residents, and then another treaty between all the people of the western Northwest Territories and the Federal Government. Together, these treaties will state how people of the area wish to govern themselves.

But Will The Federal Government Agree?

The Federal Government has agreed to fund the WCF and the NCF to develop constitutional proposals. Although there are ongoing consultations, there is no guarantee that Ottawa will agree with all the results. When a final proposal is ready it will need to be negotiated.

The Federal Government has given the following indication of what its position will be:

The Federal Government Position:

A) On Division:

1. Northerners must reach a consensus among themselves and with the federal government on the location of a boundary.

2. Northerners must reach a consensus among themselves and with the federal government on the distribution of powers to the local, regional and territorial levels of government.

3. All comprehensive aboriginal claims must be settled, including the selection of claim areas. (Significant progress in all claims would probably satisfy this condition.)

4. A majority of N.W.T. residents must continue to support division.

B) On a Boundary:

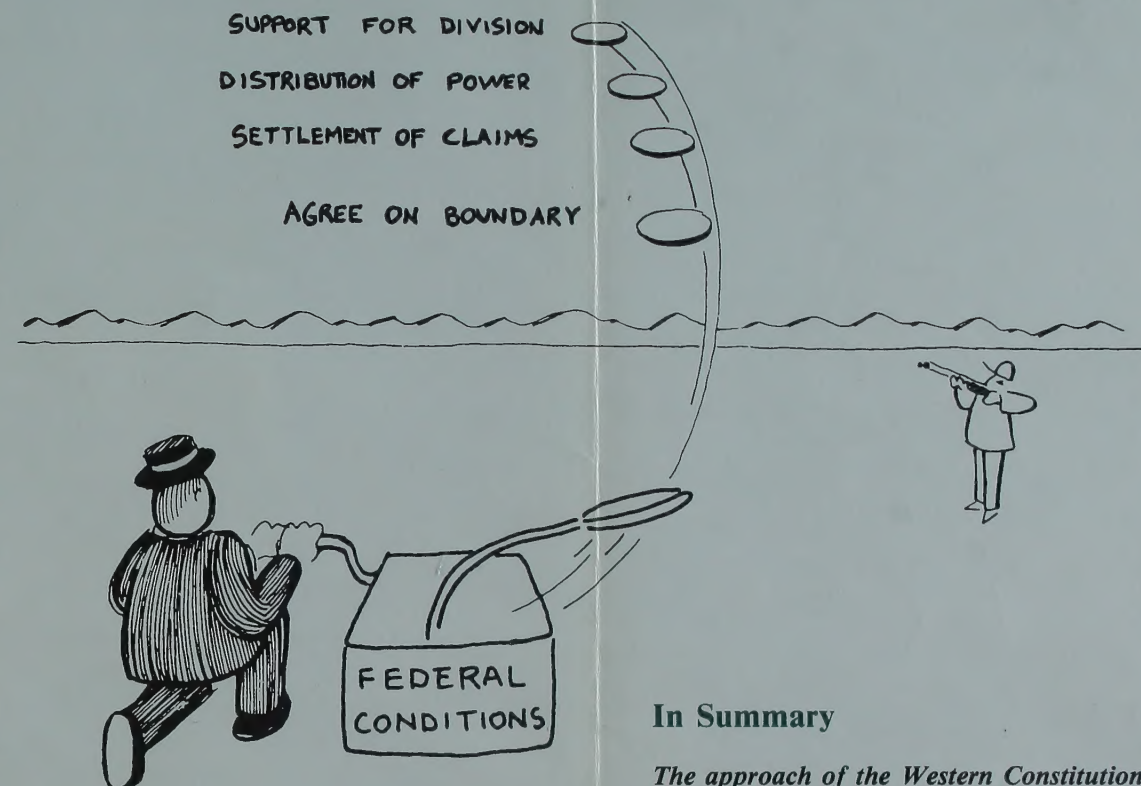
The Federal Government states clearly that the boundary cannot be based solely on ethnicity. Other factors must also be given equal importance. These include:

1. Each new territory should have a sound economic base.
2. Equity between the new territories.
3. Recognition of community of interests which develops from history, geography, culture and systems of administration and transportation.

C) On Provincial Status:

The Federal Government has made it clear that it does not yet see provincial status and/or territorial control of land and resources as realistic options in the immediate future.

4. The goals of responsive and accountable government are not necessarily achieved by increasing the size and complexity and levels of government. Keep in mind the costs which will have to be shared by the Territorial and Federal Governments.



In Summary

The approach of the Western Constitutional Forum is unique in Canadian history because it brings together aboriginal peoples and non-natives to develop a public government respecting both the Aboriginal Rights of the original peoples and the individual rights and freedoms of all Canadians.

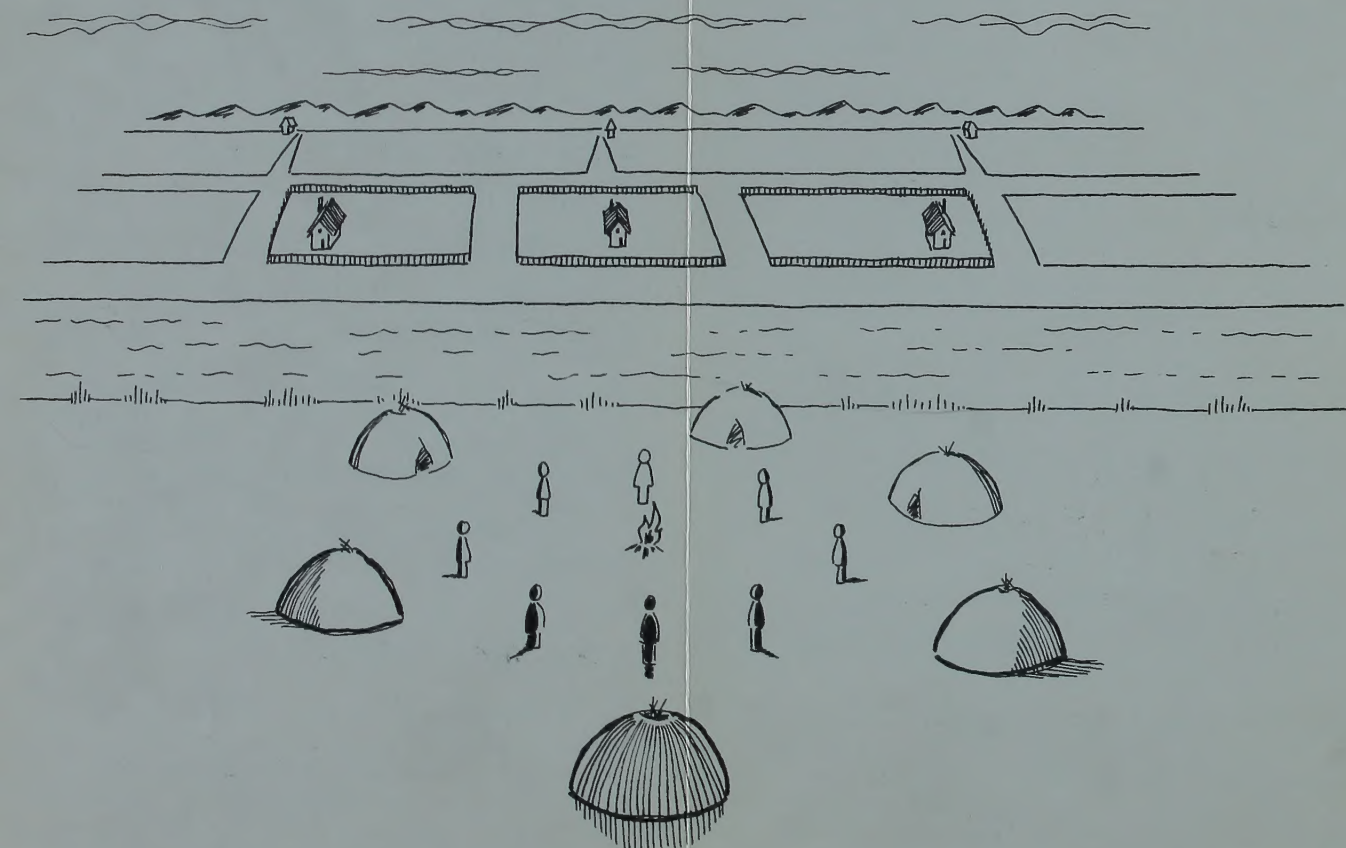
Realistically, at this point both groups need to get together to develop northern government because neither can achieve what they want just on their own.

D) On Principles For Government:

1. Federalism: matters which are primarily territorial or local should be controlled at these levels, while matters which are primarily national should be controlled federally.

2. Proposals must be consistent with the protection of individual rights set out in the *Charter of Rights and Freedoms* of the *Constitution Act 1982* and be consistent with the division of provincial and federal powers laid out in the *Constitution Act 1867*.

3. Aboriginal rights and claims must be protected. Consideration might also be given to further measures to protect and enhance aboriginal rights and culture.



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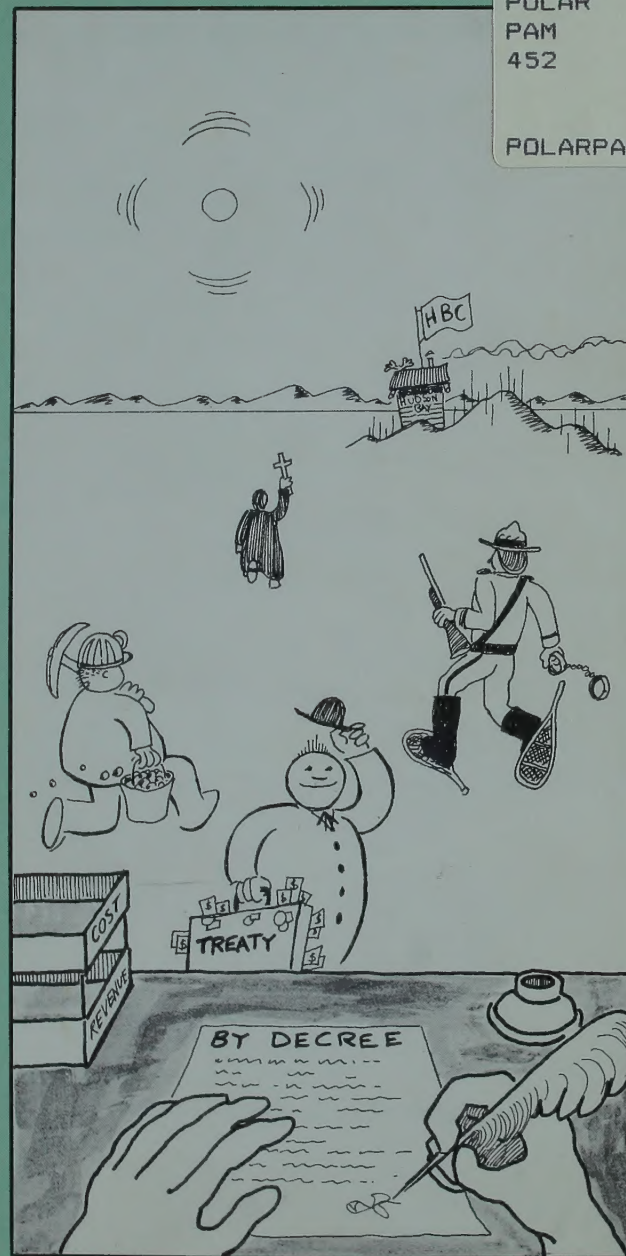
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1 OUR COLONIAL PAST

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OUR COLONIAL PAST

History of Administering the N.W.T.

Canada was formed in 1867 as a union of four British colonies: Ontario, Quebec, New Brunswick and Nova Scotia. To the north and west of the new Canada, the Hudson Bay Company controlled an immense fur-trading empire – north to the Arctic Ocean, west to the mountains – known as Rupert's Land and the North-West Territory. In 1869 the newly formed Government of Canada passed *An Act for the Temporary Government of Rupert's Land and the North-Western Territory when United with Canada*. It seems that Prime Minister Sir John A. Macdonald was getting worried that if Canada didn't claim this vast territory then the United States would:

"I would be quite willing personally to leave that whole country a wilderness for the next half-century, but I fear that if Englishmen do not go there, Yankees will."
– Sir John A. Macdonald, 1865.

Macdonald's government also included a number of railwaymen who wanted to make their fortune building railways across this new territory. They hoped to encourage settlers to open up the land for farming. Before the railway companies could own the land, however, it had to be owned by Canada. Thus, Sir John A. asked Britain to buy the land from the Hudson Bay Company and then transfer it to Canada. He also directed his officials to negotiate a series of "numbered treaties" and Half-breed scripts in exchange for land or cash with the intention of extinguishing any aboriginal claims to the area.

But What About the Original Peoples?

Sir John A. didn't consult the residents of the territory on this transfer however, nor did he bother to inform them of his plans. The Metis in Assiniboia, later Manitoba, along with some Indians and a handful of fur traders were alarmed that they might lose their way of life, their culture and their freedom to hunt buffalo on the open prairie. They feared an invasion of Protestant farmers, and when Canadian surveyors began surveying the land into quarter sections, open hostility resulted. The proud, independent Metis found among their own people a natural leader named Louis Riel.

In the fall of 1869, under Riel the Metis took over Fort Garry and established a "provisional government" to force Macdonald to listen to their concerns. After much discussion, in May 1870 a small Province of Manitoba was formed. In June of that year, Macdonald sent several hundred troops west in a show of force designed to impress the Metis, the provinces and the United States with Canada's presence in the region. Riel, learning of their approach, escaped to the United States.

Two Forms of Government

Within the tiny Province of Manitoba, residents had the right to elect their own provincial government. In Rupert's Land and the Northwest Territories, however, it was a different story. There, under the *North-West Territories Act* of 1875, the federal government began administering the area itself by appointing a Lieutenant-Governor and an advisory council to decide what was best for the region.

Over time, more in response to the settlers than the aboriginal population, the federal government negotiated the formation of new western provinces, each with the power to control its own provincial affairs: British Columbia, 1871; Alberta and Saskatchewan, 1905. Increasingly, most Canadians negotiated the right to run their own affairs under provincial governments.

The administration of the Territories remained, however, directly under the control of the federal government. In 1898, with the gold-rush to the Klondike, the Yukon Territory was created, but it too still remained directly under federal control.

Absence of Mind

Between 1905 and 1954 nobody paid much attention to political development in the Territories. With the discovery of oil at Norman Wells, Treaty 11 was signed in 1921 but at the time this did not greatly affect northern life. It was in the 1940's that northern oil and minerals started to become more important. In the early fifties, the United States began building DEW-line sites across the arctic and the Canadian government again became aware of its north.

"Apparently we have administered these vast territories of the north in an almost continuing state of absence of mind."
– Prime Minister St. Laurent, 1953.

It soon became obvious that Canada was still treating her Territories much the same as she had treated them a hundred years ago. Without involving the residents, particularly the aboriginal

peoples, the federal government appointed a Commissioner and council to make decisions. It was not until 1951 that the Council was increased to 8 members to include three elected members from the Mackenzie Valley. In the same year, the Council held its first ever northern session, in Yellowknife.



The Government Moves North

In 1966 the Carrothers Commission advised the federal government to gradually transfer powers to the north to create “not provincehood, but the means of growth to provincehood.”

As a result, in 1967 the Territorial Government moved north with Stuart Hodgson named the first resident Commissioner. The number of employees and the programs of the territorial government grew rapidly after this time. By the mid-seventies however, it became clear that many residents, especially the original peoples, did not see the Territorial Government as their government.

Aboriginal Involvement

When the federal government refused to negotiate northern political development through Land Claims, aboriginal people began participating more actively in the Legislative Assembly. By 1984 the Legislative Assembly had an aboriginal majority with 24 fully-elected seats. Through the Western Constitutional Forum, the original peoples are involved in creating a new government which will speak for and represent their interests.

A Changing Government

Over time the Legislative Assembly and Territorial Government have moved somewhat towards more fully responsible northern government. There is now an eight-person Executive Council chosen from the elected representatives although it is still responsible to the federally appointed Commissioner. A territorial Minister of Finance has an increasing role in setting government spending priorities.

Following the 1982 territorial plebiscite which favoured division of the present N.W.T., the Legislative Assembly through the Western and Nunavut Constitutional Forums has encouraged the development of new, uniquely northern forms of responsible government, governments which all northern people will feel are “their government.”

Through the Years . . .

- 1899: - Treaty 8 signed and Athabasca Half-breed script granted.
- 1905: “Northwest Territories Amendment Act”
 - Head called “Commissioner”.
 - This part-time position held by Deputy Head of Royal Northwest Mounted Police until 1920.
 - No-one appointed to 4-person Council so no legislation passed.
- 1920: Discovery of oil at Norman Wells
 - Deputy Minister of Interior becomes Commissioner for next 45 years.
- 1921: Treaty 11 signed and Mackenzie River Half-breed script granted.
 - Appointed Council increased to 6 people.
- 1921 - 51: Territorial Administration unchanged, described as “an inter-departmental advisory committee, co-ordinating the activities of federal departments within the Territories.”
- 1951: N.W.T. Council increased to 8 members, including 3 elected from the Mackenzie Valley.
 - first northern session held in Yellowknife
- 1952: Mackenzie District becomes separate federal constituency. (Dene and Inuit not yet allowed to vote)
- 1955: Increased legislative and financial powers
 - creation of Territorial Court

- 1958: Council could borrow money subject to federal approval.
- 1950’s - 1960’s:
 - movement of people off the land into communities
 - provision of housing, schools, health-care, family allowance and old age pension in communities
- 1960: Dene and Inuit allowed to vote federally
- 1961: Suggestion of dividing the N.W.T. from some Mackenzie District residents who believed it would speed up political development in the West.
- 1964: Office of Commissioner becomes full-time job
- 1965: A.R.W. Carrothers appointed to head up “Advisory Commission on the Development of Government in the N.W.T.”
- 1966: Carrothers recommends:
 - no division at this time
 - gradual increase in responsibility: “not provincehood, but the means of growth to provincehood.”
- 1967: N.W.T. Government moves to Yellowknife
 - Stuart Hodgson named first resident Commissioner
- 1970: 10 person Assembly created, 6 elected
 - terms extended to 4 years
 - gets responsibility for administering Justice
- 1975 - 79: First fully-elected council with power to elect own speaker & name 2 persons to Executive
 - simultaneous translation of Inuktitut & English
 - role of Ministers increases; role of Commissioner and Deputy decreases.
- 1977: Berger Inquiry reports to Federal Government.
- 1979 - 80: Aboriginal majority in Legislative Assembly
 - 5, later 7 elected members sit on Executive
 - First Territorial Finance Minister
 - Commissioner no longer sits in Assembly

- 1982: 56% majority favours Division in plebiscite
- 1984: Legislative Assembly increased to 24 members,
 - with 8 member Executive Council.
- 1984: Inuvialuit Land Claims legislation passed in House of Commons.